

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA,)
4 vs.) Case No.:
5 NICHOLAS HOVAN,) 2:20-cr-00254-AB-1
6 Defendant.) Philadelphia, PA
June 29, 2021
)

7 TRANSCRIPT OF PROCEEDING
8 (EVIDENTIARY SUPPRESSION HEARING)
9 BEFORE THE HONORABLE ANITA BRODY
SENIOR UNITED STATES DISTRICT COURT JUDGE

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1 P R O C E E D I N G S

2 THE COURT: Move back to the back.

3 MR. MURRAY: And, Your Honor, there's
4 two government agents. I have not checked with them
5 whether they're vaccinated. I know one plans on
6 wearing a mask when he testifies.

7 THE COURT: Well, but I have to wear a
8 mask if he's going to be --

9 MR. MURRAY: Okay.

10 THE COURT: There's not much --

11 MR. MURRAY: Okay. And I can check
12 with him now if the Court would like, you know, or I
13 can have the agent check --

14 THE COURT: That's fine. When he's
15 called.

16 MR. MURRAY: Yes.

17 THE COURT: Then you can let me know
18 and I'll have to wear my mask.

19 MR. MURRAY: Thank you very much.

20 THE COURT: I mean, I'm vaccinated but
21 that isn't the issue.

22 MR. MURRAY: I understand. For safety.

23 THE COURT: Yeah.

24 MR. MURRAY: We'll check right now.

25 Thank you, Your Honor.

1 THE COURT: Okay. All right. You can
2 -- if you're ready, prepare -- the person who isn't
3 vaccinated has to keep their mask on. Do you
4 understand that? Okay.

5 All right. We're here in the matter of
6 the United States v. Nicholas Hovan at criminal action
7 number 2020-254-1. And I recognize the presence of
8 Jennifer Williams. Good morning, Ms. Williams.

9 MS. WILLIAMS: Good morning, Your
10 Honor.

11 THE COURT: Mr. Murray?

12 MR. MURRAY: Yes, Your Honor. Good
13 morning.

14 THE COURT: And Ms. Deal?

15 MS. DEAL: Yes. Good morning, Your
16 Honor.

17 THE COURT: And there's a case agent?
18 Mr. Torno, is that correct?

19 MR. PICANTE: I'm Agent Vacanti (ph).
20 And Mr. Torno's behind me.

21 THE COURT: Okay. All right.
22 That's -- you're -- it's okay. Thank you.

23 Okay. And for defense, Ryan Fayhee, I
24 think it would be.

25 MR. FAYHEE: Good morning, Your Honor.

1 THE COURT: And with you?

2 MR. FAYHEE: My colleague, Tyler Grove.

3 MR. GROVE: Tyler Grove.

4 THE COURT: Okay. And then --

5 MR. FAYHEE: And we're joined by Mr.

6 Hovan --

7 THE COURT: Okay.

8 MR. FAYHEE: -- to my right.

9 THE COURT: All right. Thank you.

10 All right. It's --

11 MR. MURRAY: The report is both the

12 agents are vaccinated. The agent, for personal

13 reasons, would like to keep a mask on regardless.

14 THE COURT: Oh, they can certainly --

15 they certainly can do that. And I'll decide whether

16 I'm going to or not.

17 MR. MURRAY: Great. Thank you.

18 THE COURT: Okay. But if you'd like --

19 it's very hard to dress accordingly if you have masks

20 on. And I've asked the one person -- is everyone else

21 in the courtroom vaccinated? You're not. Okay. And

22 you're way in the back, too. And you're the agent?

23 MR. TORNO: Yes, ma'am.

24 THE COURT: Okay. And are you

25 vaccinated, too? No. I'm talking -- and the two in

1 the back? And you're you vaccinated?

2 MR. PICANTE: Yes, Your Honor.

3 THE COURT: Okay. I'm taking your word
4 for it. I mean, it's not a matter of me. It's a
5 matter of you.

6 Okay. The government has the burden.
7 They can begin.

8 MR. MURRAY: And just -- Ms. Deal's
9 going to speak here. Does that mean, Your Honor, that
10 it's permissible for us to take our masks off, Your
11 Honor?

12 THE COURT: Yes.

13 MR. MURRAY: Thank you. I just wanted
14 to confirm that.

15 THE COURT: Yeah. Sure. If you're
16 willing to, of course.

17 MR. MURRAY: Thank you.

18 THE COURT: That's -- you now know --
19 you now know what's here. Okay?

20 MS. DEAL: Good morning, Your Honor.
21 Kate Deal on behalf of the government.

22 THE COURT: Who -- I wasn't introduced
23 to you.

24 MS. DEAL: Kate Deal.

25 THE COURT: Okay.

1 MS. DEAL: Is it okay with Your Honor
2 if I approach the podium?

3 THE COURT: Of course.

4 MS. DEAL: Good morning.

5 THE COURT: You're not -- you haven't
6 made an appearance.

7 THE CLERK: No. She has, Your Honor.
8 (indiscernible).

9 MS. DEAL: Katherine. Katherine Deal,
10 D-E-A-L.

11 THE COURT: No. Oh, sorry. Okay. My
12 apologies.

13 MS. DEAL: Thank you.

14 THE COURT: Okay. All right, Ms. Deal.

15 MS. DEAL: Thank you, Your Honor.

16 As Your Honor well knows, we're here
17 today for a hearing on whether Defendant Nicholas
18 Hovan voluntarily consented to the search of his two
19 cell phones, a Samsung phone and an iPhone, both of
20 which were in his possession at the time of his arrest
21 in this case on February 10th, 2020 here in
22 Philadelphia.

23 THE COURT: Okay.

24 MS. DEAL: As Your Honor may recall,
25 that arrest occurred just a couple of blocks from here

1 at the Hotel Monaco. During a meeting in which
2 Defendant Hovan and several of his co-conspirators
3 were finalizing and implementing their plan to engage
4 in a legal transaction in sanctioned Iranian oil.

5 Now today, for purposes of this
6 hearing, Your Honor, the government intends to present
7 a variety of evidence to demonstrate Defendant Hovan's
8 voluntary consent.

9 THE COURT: Okay. I have heard the
10 tape.

11 MS. DEAL: Great.

12 THE COURT: I listened to it over the
13 weekend.

14 MS. DEAL: Wonderful, Your Honor. We
15 have a full copy of that recording in our exhibit
16 binder. We also have a full copy of the transcript of
17 that post-arrest interview --

18 THE COURT: I'm not in my own courtroom
19 sometimes.

20 MR. MURRAY: May I approach, Your
21 Honor?

22 THE COURT: Yeah, of course.

23 THE COURT: Okay.

24 MS. DEAL: Great. So as Your Honor
25 will see, in our exhibits today, we plan to present

1 the audio recording. Relevant excerpts of that
2 recording will be played. We have the full transcript
3 of that post-arrest interview in which Defendant Hovan
4 repeatedly gave his consent to the search of his cell
5 phones. We also have some documentary evidence for
6 Your Honor including a copy of Defendant Hovan's
7 signed written consent form. That's a form which
8 Defendant Hovan signed during this interview in which
9 he acknowledged expressly that he was given voluntary
10 consent to the search of these two phones.

11 From the government's perspective, Your
12 Honor, we think that those two pieces of evidence are
13 sufficient to carry our burden, in and of itself, but
14 we're also prepared today to present the testimony of
15 the two interviewing agents. It's Special Agent
16 Jessica Fear and Special Agent Christopher Jackson of
17 the FBI who participated in that post-arrest interview
18 and who we intend to present to provide consistent
19 testimony today.

20 THE COURT: Okay.

21 MS. DEAL: Now before we jump into the
22 evidence, Your Honor, if the Court will permit the
23 indulgence, I'd like to take just a couple of minutes
24 to provide some legal and factual framework for
25 today's inquiry.

1 THE COURT: Yes. What's the problem?

2 MR. FAYHEE: Your Honor, just for the
3 record, it would be great if we took evidence before
4 getting into argument unless they give me the
5 opportunity to respond to their arguments before
6 taking evidence.

7 THE COURT: Yeah. You want an opening
8 statement? Is that what you want?

9 MS. DEAL: Yes, Your Honor.

10 THE COURT: Okay. You can have a
11 chance to do --

12 MR. FAYHEE: Sure.

13 THE COURT: -- an opening statement.
14 So sure.

15 MS. DEAL: So, Your Honor, just to put
16 everyone in the right frame of mind in terms of the
17 legal framework, as Your Honor well knows, the Fourth
18 Amendment permits consent searches. If the validity
19 of that consent is challenged, the government has the
20 burden by a preponderance of the evidence to show that
21 the consent is freely and voluntarily given. The
22 question of whether consent to search is voluntary as
23 opposed to the results of undue duress or coercion is
24 a question of fact. And as the Court knows, it's
25 measured by the totality of the circumstances.

1 In turn, that totality is measured by a
2 variety of factors. The Court can consider the
3 defendant's demeanor, the length of the defendant's
4 encounter with law enforcement, the atmosphere of any
5 questioning, whether the officers and agents involved
6 in the interview displayed any show of force. It also
7 may be relevant to consider the defendant's age, the
8 defendant's education and intelligence and whether the
9 defendant had been advised of his constitutional
10 rights.

11 I'd also like to note for Your Honor
12 that disclosure of the defendant's right to refuse
13 consent is relevant but it's not necessary to
14 establish valid consent. And here, as Your Honor will
15 hear and see today from the evidence, Defendant Hovan
16 received written disclosure of his right to refuse
17 consent to the search and he then signed a written
18 acknowledgment that he had received that notification.

19 When evaluating the validity of consent
20 under this totality of the circumstances test, no
21 single factor is dispositive.

22 Now, Your Honor, with that basic legal
23 framework in mind, I submit to you that you will hear
24 overwhelming and irrefutable evidence that Defendant
25 Hovan repeatedly gave voluntary consent to the search

1 of his two cell phones.

2 And, Your Honor, it's not just that he
3 gave voluntary consent, but he did it repeatedly in
4 recorded oral statements and in writing during the
5 course of, again, a fully recorded, fully Mirandized
6 post-arrest interview that in its entirety lasted less
7 than one hour in length. In fact, one of the things
8 that's remarkable about this case is that Defendant
9 Hovan repeated volunteered the consent. And what I
10 mean by that is he invited the agent to look at
11 evidence on his phone before they even asked about his
12 phone. For example, Your Honor will hear in the
13 recording and will see in the transcript that in
14 response to an open-ended question about whether the
15 defendant had anything further he'd like to share,
16 Defendant Hovan volunteered that he would point the
17 agents to every single conversation he's ever had.
18 That statement came after Defendant Hovan had already
19 invited the agent to both take and look at his chat
20 with co-conspirators. That statement also followed
21 his prior invitation to the agents to "have at his
22 WhatsApp conversation and things like that" because
23 using Defendant Hovan's own words, those were fair
24 game for law enforcement.

25 As everyone in this courtroom is well

1 aware, things like chat, things like a WhatsApp
2 conversation, other similar kinds of conservation,
3 they appear on cell phones.

4 Now given all of these unprompted open
5 invitations from Defendant Hovan to have the agent
6 look at evidence on his phone, what did these agents
7 do? They did what good agents are supposed to do.
8 They confirmed. They asked Defendant Hovan to confirm
9 his consent in writing if he was okay with the agents
10 looking through his phone. And surprisingly, as you
11 will hear, given the tenor of the entire conversation,
12 how did Defendant Hovan respond? He confirmed that,
13 yeah, he was okay with that. And then he further
14 confirmed that consent in writing by reviewing and
15 signing a straightforward one-page standard written
16 consent form.

17 Now, Your Honor, you'll see that form.
18 It is in the binder today. That consent form
19 specifically identifies Defendant Hovan's two cell
20 phones as the property to be searched. And by signing
21 that form, Defendant Hovan acknowledged expressly in
22 writing that he was giving the consent voluntarily and
23 further that he had the right to refuse consent.

24 Remarkably, Your Honor, as you will
25 hear, Defendant Hovan's offering of consent didn't end

1 there. They continued. After providing written
2 consent to the search of his phones, he continued to
3 make oral statements offering up those devices to the
4 agents. He told the agents "They should feel free to
5 look at everything in the phone" and that he would
6 point the FBI to the most --

7 MR. FAYHEE: Your Honor, I'm sorry to
8 interrupt the argument. I think the issue today is
9 about consent. So there's a whole -- I mean, if we
10 want to open it up and have a mini trial about whether
11 or not the client's guilty or not, but going beyond
12 consent, if the issue is for consent, I think the
13 government ought to limit themselves. Happy to
14 examine everything leading up to the moment of his
15 arrest, the moment of the consent form. But if we're
16 going to get into then what he said following consent,
17 I think that goes well beyond the scope of what Your
18 Honor is allowed for today.

19 MS. DEAL: Your Honor, this is an
20 example of one of the many instances in which consent
21 was given all of which, I understand, are being
22 challenged.

23 THE COURT: No. I think -- that wasn't
24 my understanding. But if you believe it's your
25 understanding, I'll let you certainly argue it. Would

1 you get closer to the microphone?

2 MS. DEAL: Sorry. Can you hear me --

3 THE COURT: Or move the mic -- yeah.

4 I'm not sure. Is the microphone -- one second. I'm
5 not quite used to this --

6 MS. DEAL: No worries. Oh, there we
7 go.

8 THE COURT: Okay. Yeah.

9 MS. DEAL: Is that better?

10 THE COURT: Much better.

11 MS. DEAL: Thank you.

12 So, Your Honor, as I was just saying,
13 not only did Defendant Hovan provide written signed
14 consent, he also continued to offer his oral consent.

15 THE COURT: Afterwards.

16 MS. DEAL: Afterwards.

17 THE COURT: At the --

18 MS. DEAL: At the same one hour -- less
19 than one hour recorded interview.

20 THE COURT: All right.

21 MS. DEAL: He is challenging consent
22 even though he told the agents they should feel free
23 to look through everything on his phone. He offered
24 to point them to the most important conversation.
25 With respect to his personal cell phone, he directed

1 the agents to "go in here and see everyone that's in
2 the chat".

3 Now, Your Honor, as you will also hear
4 from the evidence today, Defendant Hovan made all of
5 these statements of voluntary consent after receiving
6 and waiving his Miranda rights, both orally and in
7 writing at the outset of the conversation.

8 You'll also hear, Your Honor, that for
9 their part, throughout this recorded interview, the
10 agents never showed force. The agents never mentioned
11 any search warrant. In fact, the words "search
12 warrant" were never uttered by anyone during the
13 entire course of the interview. The agents never
14 mentioned any other legal process or other means by
15 which they might obtain information that was on
16 Defendant Hovan's phones if he didn't consent. They
17 surely never said or even suggested that Defendant
18 Hovan was required to consent. There is simply no
19 evidence of coercion on this record. There were no
20 misrepresentations by these agents. And there's
21 simply no doubt that Defendant Hovan gave valid
22 consent multiple times in multiple ways orally and in
23 writing prior to the search of his two phones.

24 Your Honor, you'll also hear, on the
25 recording and through the witnesses, that during the

1 course of this interview, Defendant Hovan was
2 perfectly lucid. He appeared eager to cooperate. And
3 he was relaxed enough to joke and laugh with the
4 agents at times which you'll hear.

5 The agents will also explain for Your
6 Honor the physical circumstances in which this
7 interview occurred. You'll hear that Defendant Hovan
8 was sitting across a round table from the agents in a
9 small quiet interview room. It was well lit. It was
10 maintained at a comfortable temperature and the
11 interview occurred in the middle of the day.

12 At no point during that conversation
13 will you hear Defendant Hovan express any reservation
14 about his repeated offerings of consent. He didn't
15 ask any questions about whether to consent. He didn't
16 mention a search warrant. He didn't ask about a
17 search warrant. And he didn't rescind or even attempt
18 to rescind the consent that he repeatedly and
19 consistently gave.

20 Your Honor, what you'll hear is that
21 upon receiving his constitutional rights, he made the
22 tactical decision to appear cooperative and
23 forthcoming. From start to finish in this
24 conversation, Your Honor will hear he told the agents
25 that he determined the best thing for him to do at

1 that point in time, having been caught out by the FBI,
2 was to tell the agents what he knew or to at least
3 appear as if that was what he was doing in this
4 interview.

5 In addition, Your Honor will learn
6 today a little bit about Defendant Hovan's educational
7 and professional background. At the time of his post-
8 arrest interview, Defendant Hovan was in his thirties.
9 He had attended a prestigious private school. He had
10 subsequently graduated with a degree from Buchtel
11 University. Following that, he had more than 10
12 subsequent years as a working professional, including
13 most recently as an executive working for AT&T, a
14 Fortune 50 company.

15 Now, Your Honor, you'll hear all of
16 these facts today. They're all consistent and they
17 form relevant and compelling evidence establishing
18 voluntary consent from the totality of the
19 circumstances.

20 In terms of the particular exhibits
21 that we have given --

22 THE COURT: Well, we can go through
23 those when --

24 MS. DEAL: -- to the Court --

25 THE COURT: -- you present them.

1 MS. DEAL: My understanding, Your
2 Honor, from defense counsel is that there's no
3 objection to these exhibits. They are the same
4 materials that were submitted with our opposition
5 brief. And so, assuming there's no objection, the
6 government would offer them formally into evidence at
7 this point.

8 MR. FAYHEE: No objection, Your Honor.

9 THE COURT: Okay. Thank you.

10 (Government's unopposed exhibits received)

11 THE COURT: All right. Would you like
12 to address the Court, Mr. Fayhee?

13 MR. FAYHEE: Thank you, Your Honor.

14 Just a few points I'd like to draw your
15 attention to as we're talking about the presentation
16 of evidence here on cross-examination, a few points, I
17 think for contextual purposes. It's true that my
18 client, Mr. Hovan, is educated. In fact, at the time
19 of the arrest, as was stated, he worked at AT&T in
20 their help care solutions arm. He was a college
21 graduate. He had never been arrested ever before in
22 his life. Not even a traffic ticket which is
23 remarkable in particular. What's missing, though,
24 from that picture that's being painted is less than an
25 hour before he was sitting in that room, he was in

1 another with his back to the door through which and
2 purposefully set out that way in a room with FBI
3 agents and a confidential human source. They were set
4 to the back of the door for the purposes of allowing
5 the FBI to surprise them with guns drawn, remove him
6 from that location and taken to another one in
7 handcuffs. And in the course of that interview's
8 significant omissions of what was just the picture
9 that was just painted.

10 What you didn't hear is that that short
11 while after his arrest at gunpoint for a sanctions or
12 alleged sanctions violation, he's sitting with two
13 handcuffs connected to the table with two FBI agents,
14 a person who's never been arrested, who's used to
15 working at AT&T and is quite obviously scared for his
16 life. This is an important context in which the
17 alleged consent was given. This isn't a traffic stop
18 where he's, you know, not in a custodial setting.
19 This isn't at home when the FBI shows up at the door
20 and asks for consent to search the house. This is the
21 first time arrest of a young man who works at AT&T and
22 is in handcuffs strapped to the table in a nondescript
23 building in a place he has no idea where he's at.
24 Okay? Clearly, he knew he was in the custody of the
25 FBI. I'm not seeking to suggest that. I'm just

1 saying that custodial setting is relevant to the
2 question of whether or not he gave voluntary consent.

3 Now, Your Honor, this idea that he
4 repeatedly gave consent is absolutely incorrect. Mr.
5 Hovan absolutely was willing, voluntary and truthful
6 in this interview. The agents took pains to read
7 through in great detail his Miranda warnings, in fact.
8 They initialed every Miranda warning they gave him and
9 he signed a consent to speak to these agents. He
10 absolutely offered in that setting to walk through
11 messages that he had had. Now the product of that --
12 I know this isn't before the Court today but it is
13 important context. The reason he sought to do that is
14 because one of the confidential human sources that sat
15 before him in this town told him what he was doing did
16 not violate the law. And he wanted to demonstrate it
17 to the agents. That is not the same as consenting to
18 the full search of the phone. And what you're going
19 to hear today from the agents, either on direct or on
20 cross-examination, is, in fact, when Mr. Hovan offers
21 his understanding, comments like "You're probably
22 going to look at these anyway" or when offering the
23 passcode before a consent form is even brought up, the
24 statement made, "Yeah, we're going to look at both of
25 them irregardless". And so the fact that it wasn't

1 mentioned that there was a search warrant or there
2 might be a search warrant is immaterial.

3 The key question for Your Honor today,
4 the key question, is whether or not the consent was
5 freely given. And what you're going to hear again at
6 the end is that he did not believe the consent was
7 freely given because he wasn't actually offered a
8 choice. In deep contrast to that Miranda form -- in
9 deep contrast to that Miranda form, that form sat in
10 front of another FBI agent across the table. It was
11 not in front of Mr. Hovan where the agent then
12 carefully, before letting him read it, before walking
13 him through it, carefully wrote down the passcodes to
14 the phone and then, as a mere formality, did not
15 request but instructed him then to sign it. That's
16 the evidence you're going to hear today.

17 You're going to hear that from the
18 moment the form actually sat in front of him, it
19 wasn't read to him, it wasn't walked through. They
20 never asked whether he had any questions. He just
21 instructed him to sign. You'll hear on the tape.
22 It's less than 20 seconds from the moment in which
23 it's handed over and sat there. The idea that that is
24 reasonable consent when that form follows the absolute
25 failure to correct his misimpression that they're

1 going to "look at his phones anyway" and then the
2 reinforcing of that misimpression that "we're going to
3 look at the phones regardless". Regardless of whether
4 you give the passcodes and regardless of whether you
5 give your consent.

6 And it's very problematic, Your Honor.
7 And just for the record, I know we're limited on
8 consent here today, but it is seriously problematic
9 where we have a search warrant. In our view, there
10 are material misstatements and material omissions
11 including the direction of what he was doing didn't
12 violate the law. To be able to have a consent hearing
13 today that is bifurcated from those key issues because
14 I think what you're going to hear today on cross-
15 examination is the key goal was to get Mr. Hovan to
16 cooperate to get consent for this phone and to treat
17 him and coordinate ahead of time with another set of
18 agents who were sitting next door interview another
19 witness to try to get them to speak against each other
20 and to try and compel consent through the fear that
21 the first time arrestee had for being arrested, for
22 being put in a room in handcuffs, taken there after
23 being -- you know, having a gun pointed at him for the
24 first time in his life. And so that's the environment
25 that he's in, not the one that was described here

1 today.

2 And we look forward to examining the
3 evidence and come back to you and argue later.

4 THE COURT: Okay. Thank you.

5 All right. Who's going to be -- okay.

6 MR. MURRAY: May I call our first
7 witness, Your Honor?

8 THE COURT: You certainly may.

9 MR. MURRAY: The United States calls
10 Agent Jackson to the stand.

11 Your Honor, may I approach? I'd like
12 to provide the witness with the exhibits.

13 THE COURT: Absolutely.

14 MR. MURRAY: Thank you.

15 THE COURT: You don't have to ask me.

16 MR. MURRAY: Thanks very much.

17 (Pause)

18 THE COURT: Do you have any objection
19 to my not wearing a mask?

20 MR. JACKSON: No, Your Honor.

21 THE CLERK: Please raise your right
22 hand.

23 GOVERNMENT WITNESS, CHRISTOPHER JACKSON, SWORN

24 THE CLERK: If you move that
25 (indiscernible) before you.

1 THE WITNESS: Thank you.

2 THE CLERK: Sir, would you state and
3 spell your name for the record, please.

4 THE WITNESS: Christopher Jackson,
5 C-H-R-I-S-T-O-P-H-E-R, J-A-C-K-S-O-N.

6 THE CLERK: Thank you.

7 MR. MURRAY: Your Honor, may I proceed?

8 THE COURT: GATS --

9 THE WITNESS: J-A-C-K-S-O-N.

10 THE COURT: G-A-T -- okay. Thank you.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Okay, Agent.

13 MR. MURRAY: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. MURRAY:

16 Q So, Agent Jackson, how are you employed?

17 A I'm employed with the FBI --

18 Q And --

19 A -- as a special agent.

20 Q And for how long have you been a special
21 agent with the FBI?

22 A Since 2016.

23 Q I'm going to ask you about an arrest that
24 occurred about a year ago, little more than a year
25 ago. But before we do that, have you participated in

1 arrests before when you were working with the FBI?

2 A Yes.

3 Q About how many times?

4 A Probably around 20.

5 Q And have you also participated in post-
6 arrest interviews?

7 A Yes.

8 Q About how many times?

9 A Probably around the same range.

10 Q And have you obtained consent from arrested
11 individuals or witnesses in your cases?

12 A Yes.

13 Q And about how many times have you done that?

14 A Probably 10 to 20.

15 Q Okay. Now I'm going to ask you to draw your
16 attention back to February 10th, 2020. Did you
17 participate in a series of arrests that day?

18 A Yes.

19 Q And what were your responsibilities on that
20 day?

21 A To effect the arrest and transportation of
22 Mr. Nicholas Hovan.

23 Q And did you do that?

24 A Yes.

25 Q Where did that occur?

1 A At Hotel Monaco.

2 Q And where is that located?

3 A Here in Philadelphia, in the city.

4 Q About how far from the courthouse here?

5 A Maybe like one mile. Couple blocks.

6 Q Okay. And about what time of the day of
7 February 10th was that?

8 A Late morning.

9 Q Do you have an approximate time?

10 A Probably like 11:45, 11:55, somewhere in
11 there.

12 Q Okay. And during that arrest, did you take
13 any objects from Mr. Hovan?

14 A Yes.

15 Q What did you take?

16 A He had two cell phones on his person and I
17 believe a bag as well.

18 Q Okay. Now after or at the time of the
19 arrest, did you or any of the agents that you observed
20 mention the fact that there was a search warrant in
21 the case?

22 A No.

23 Q After Mr. Hovan was arrested, what happened?

24 A After he was arrested, we transported him to
25 FBI headquarters at 701 Market Street and --

1 Q About --

2 A Okay.

3 Q About how long did that take?

4 A Probably like 10 minutes.

5 Q All right. And you did that yourself?

6 A No. I had another agent with me.

7 Q And who was that?

8 A Special Agent Jessica Fear.

9 Q And during that trip, did you mention that
10 there was a search warrant in this case?

11 A No.

12 Q Can you describe Mr. Hovan's demeanor during
13 that trip?

14 A He seemed fine. He seemed lucid. Was -- he
15 said he'd be willing to cooperate. I didn't have any
16 reason to think that he was under any duress.

17 Q Okay. During that trip, did he seem alert
18 to you?

19 A Yes.

20 Q Was he responsive to your statements and
21 questions?

22 A Yes.

23 Q Did he seem to understand them?

24 A Yes.

25 Q Now did you question Mr. Hovan during the

1 stop?

2 A During the --

3 Q Sorry. Sorry. During the trip.

4 A No.

5 Q Okay. Now when you arrived at FBI
6 offices -- I think you said it's at 701 Market Street,
7 is that right?

8 A Yeah.

9 Q That's about a block from here, the next
10 building over from the courthouse?

11 A Yes.

12 Q And when you arrived at the FBI offices,
13 what did you do?

14 A We transferred Mr. Hovan upstairs and put
15 him into an interview room.

16 Q Okay. And at that point in time, did you
17 proceed with an interview?

18 A Yes.

19 Q About what time was it?

20 A Probably around like 12, quarter after 12,
21 12:19, something like that.

22 Q Okay. And who was present at the time?

23 A Myself, Special Agent Jessica Fear and a
24 forensic accountant Megan Weber (ph).

25 Q And can you describe the room to the Court

1 that you put him in and started the interview in?

2 A It was an average size room, well lit, that
3 was comfortable. It seemed like it was fine for just
4 sitting and talking.

5 Q And when you say average size, approximately
6 how large was this room?

7 A Probably like 12 by 10 maybe, something like
8 that.

9 Q Was there a table in the room?

10 A Yes.

11 Q What shape table?

12 A Circle.

13 Q And then who were the -- who was present
14 during this interview?

15 A Myself, Mr. Hovan, Special Agent Fear and
16 Forensic Accountant Weber.

17 Q And where was everybody seated?

18 A We were all seated across the table from Mr.
19 Hovan.

20 Q And at the time frame, was the room noisy?

21 A No.

22 Q And I think you mentioned this but what was
23 the lighting like?

24 A It was well lit.

25 Q All right. Was Mr. Hovan provided the

1 opportunity to have any water or anything?

2 A Yes.

3 Q And at that point in time, when the
4 interview started, was Mr. Hovan restrained?

5 A He had leg irons on.

6 Q Okay. Can you explain to the Court what leg
7 irons are and how they work?

8 A They're pretty much cuffs around the ankles
9 instead of the hands.

10 Q Were his hands handcuffed?

11 A No.

12 Q Okay. And why were his hands free at the
13 time?

14 A In case he wanted to sign a consent form or
15 anything he might have to use for writing purposes.

16 THE COURT: Why were you putting him --
17 why were his legs constrained? What were you afraid
18 of?

19 THE WITNESS: Officer safety, ma'am.

20 THE COURT: Officer safety.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Oh.

23 BY MR. MURRAY:

24 Q Were you in the normal interview room where
25 you normally conduct interviews?

1 A Yes. I mean, we did go either one -- or
2 there's another location across the street that we
3 conduct interviews there as well.

4 Q Were there other interviews going on that
5 day?

6 A Yes.

7 Q And was this interview in a separate office
8 from where the other interviews were happening?

9 A Yes.

10 Q And was that because a number of people had
11 been arrested that day?

12 A Yes.

13 Q And you needed to use some additional rooms?

14 A Yes.

15 Q Now when this interview started around
16 12:19, you said, was it recorded?

17 A Yes.

18 Q I'm going to ask you to look into the
19 exhibit binder before you. Do you see a disc there
20 that should be marked Exhibit 1A?

21 A Yes.

22 Q And is this a recording of the full
23 interview from February 10th, 2020?

24 A Yes.

25 Q And have you listened to this?

1 A Yes.

2 Q And is this an accurate recording of that
3 interview that day?

4 A Yes.

5 Q All right. And then if you can look behind
6 that in the binder, behind that white sheet of paper,
7 is there an exhibit that's been marked 1A (sic)?

8 A 1A or 1B?

9 Q I'm sorry. 1B. Thank you very much.

10 A Yes.

11 Q And is that the transcript of that
12 recording?

13 A Yes.

14 Q And have you reviewed that and is that
15 accurate to the best of your knowledge?

16 A Yes.

17 Q Okay. Now about how long did this interview
18 take place?

19 A I think it was just shy of an hour.

20 Q Okay. And can you describe generally what
21 was Mr. Hovan's demeanor at the start of this
22 interview?

23 A He was very cooperative. Didn't seem to
24 have any like undue stress or anything like that.
25 Wanted to help in any way he could.

1 Q Okay. And did he again seem alert and lucid
2 during the interview?

3 A Yes.

4 Q And was he understanding your directions and
5 statements at the beginning of the interview?

6 A Yes.

7 Q Now during the interview, did you provide
8 him with his constitutional rights, his Miranda
9 warnings?

10 A Yes.

11 Q And about when in the interview was that?

12 A In the beginning.

13 Q And when that occurred, did he appear to
14 understand those rights and express his desire to
15 proceed?

16 A Yeah.

17 Q Did he express that to you?

18 A Yeah.

19 Q And at that point in time, was there any
20 reason for you to question that his consent was free
21 and voluntary?

22 A No.

23 Q Okay.

24 A And he was -- he never -- he could stop the
25 interview at any point in time.

1 Q You're saying through the remainder of the
2 interview he didn't stop it at any point in time after
3 you're advising those rights. Is that right?

4 A Yes.

5 Q Now can I ask you to look at Exhibit 2?
6 What's Exhibit 2 in the binder?

7 A Exhibit 2 is the advice of rights form that
8 was signed by myself and Mr. Hovan --

9 Q Okay.

10 A -- and Jessica Fear.

11 Q So can you explain what happened when this
12 was prepared?

13 A I pretty much told Mr. Hovan at the
14 beginning of the interview I want to make you --
15 advise you of your rights. If you would like to speak
16 to us after I advise you of these rights, great; if
17 not, that's fine, too. But I want to read you your
18 rights to rights and I want you to look over it before
19 I proceed.

20 I then filled out the address, date and
21 time, read all the bullets to Mr. Hovan and then asked
22 him to review it himself and, if he agreed, to initial
23 each bullet and to sign it.

24 Q So is that his writing where the initials
25 are written on that form?

1 A Yes.

2 Q And then the first signature under
3 "Consent", is -- did you observe Mr. Hovan write that
4 signature on the form?

5 A Yes.

6 Q And then there are two witness signatures on
7 the form. Do you recognize those or do you know who
8 signed those?

9 A Yes. The top witness signature is mine and
10 the other one is SA Fear's.

11 Q And at this point in time, had there been
12 any mention of the search warrant that the -- in the
13 case?

14 A No.

15 Q And at any point after this, was the search
16 warrant mentioned?

17 A No.

18 Q Now at this point in time, did Mr. Hovan
19 hear these statements?

20 A Yes.

21 Q Did he appear to understand them?

22 A Yes.

23 Q And was there any question as to his
24 voluntary signature of this form?

25 A No.

1 Q Now after this, what happened in the
2 interview?

3 A After this, we began the interview. Mr.
4 Hovan was very -- and overly cooperative and wanted to
5 provide any information, anything he could. He wanted
6 to be -- he advised that he wanted to be very truthful
7 and at some point (indiscernible) be involved with
8 this.

9 Q Sorry. I didn't hear the last statement.

10 A And at some point (indiscernible) great at
11 being involved.

12 Q And did he summarize to you certain of the
13 facts in the case?

14 A Yes.

15 Q Now during that interview, did the topic of
16 messages on his phones come up?

17 A Yes.

18 Q And how so?

19 A He was offering to direct us to messages on
20 his phone where he was talking with other people that
21 might have been known in the case.

22 Q And at some point in that discussion, did he
23 provide consent to searching his phones?

24 A Yes.

25 Q And at any point in that discussion of his

1 phones and those messages, did he mention or did you
2 mention a search warrant?

3 A No.

4 Q And now I'm going to ask you to look at
5 Exhibit 3. Do you recognize that?

6 A Yes. It's the (indiscernible) consent to
7 search form.

8 Q Is that a form that was executed by Mr.
9 Hovan during this interview?

10 A Yeah.

11 Q And there's handwriting -- or there's four
12 points on this. Under point 1, whose handwriting is
13 that?

14 A Mine.

15 Q And what have you written there?

16 A The two types of phones and the passwords if
17 they applied.

18 Q So was that the items that Mr. Hovan was
19 providing you consent to search?

20 A Yes.

21 Q And what were the two phones over which he
22 provided consent?

23 A An iPhone X and a Samsung. I believe one
24 was his work phone and one was his personal.

25 Q And he -- had he identified to you that that

1 was his work phone?

2 A Yes.

3 Q Now at the bottom of this form, there are
4 three additional points. And then there are several
5 signatures. Do you recognize those signatures or know
6 whose signatures those are?

7 A Yes. The first signature is Mr. Hovan's.
8 The witness is my signature.

9 Q Did Mr. Hovan sign that in front of you?

10 A Yes.

11 Q And then there's a date there. Who wrote
12 the date?

13 A Mr. Hovan.

14 Q Okay. And on this form, there's three
15 statements. Was he -- where was Mr. Hovan while you
16 and he were filling out this form?

17 A Sitting across from me across the table.

18 Q Okay. And at some point in time, did you
19 provide the form to him?

20 A I'm sorry.

21 Q Did you provide the form to him?

22 A Yes.

23 Q Did he read the form?

24 A Yes.

25 Q Did he appear to understand the form?

1 A Yes.

2 Q And did he, at any point, indicate that he
3 was not really or voluntarily consenting to the
4 search?

5 A No. He -- the second bullet on here says
6 he's not going to refuse consent at any point.

7 Q Okay. And that bullet states that. How was
8 he advised that he was -- had a right to refuse
9 consent?

10 A In writing on this form.

11 Q Okay. And then the third bullet point says
12 that I give permission voluntarily. Was there any
13 reason from your interaction with Mr. Hovan to think
14 that was not true?

15 A No.

16 Q And throughout this process, was Mr. Hovan
17 alert?

18 A Yes.

19 Q Did he understand your statements and
20 questions during this interchange?

21 A Yes.

22 Q And did he respond appropriately to your
23 questions?

24 A Yes.

25 Q Now at any point after that or any point

1 before this -- excuse me -- did you or Agent Fear
2 indicate that he was required to consent to this form?

3 A No.

4 Q Did you ever imply it?

5 A No.

6 Q And prior to the execution of the form, how
7 would you describe the atmosphere in this interview
8 room?

9 A It was very laid back. At times, we shared
10 a couple laughs. So it was -- it was nothing as far
11 as an aggressive atmosphere.

12 Q Did you ever make any threats?

13 A No.

14 Q And did you ever make any promises to him if
15 he provided consent?

16 A No.

17 Q Was there any times during this interview
18 where you tried to trick him with what he said?

19 A No.

20 Q And was there any yelling during this
21 interview?

22 A No, none at all.

23 Q And you've listened to the recording, I
24 believe you said earlier, right?

25 A Correct.

1 Q I'm going to play a number of clips from
2 this interview.

3 MR. MURRAY: So if I could ask Agent
4 Vacanti to pull up the first clip.

5 Your Honor, we're going to play some
6 portions and I'll intersperse it with some questions.

7 THE COURT: Fine.

8 MR. MURRAY: Okay.

9 MR. PICANTE: 1 or 1-1?

10 MR. MURRAY: 1-1.

11 So, Your Honor, just to let the --
12 before we proceed, there are -- the Court can follow
13 on the screen in front of the Court if the Court has
14 one. If the Court doesn't, I can direct you to the
15 transcript in the binder. So how would the Court --
16 I'd like to let you know where we are to make it
17 easier to follow.

18 THE COURT: No. I -- no. I can look
19 but it is easier if you let me --

20 MR. MURRAY: If you want to look in the
21 binder then that might be easier if you don't have a
22 screen.

23 THE COURT: Yeah. I think maybe it is.

24 MR. MURRAY: Okay. Good. There is --

25 THE COURT: With that --

1 MR. MURRAY: You will follow along but

2 --

3 THE COURT: I cannot see that.

4 MR. MURRAY: I appreciate that --

5 THE COURT: I have one.

6 MR. MURRAY: -- so I'm happy to do it
7 with the binder here. So, Your Honor, if you could go
8 to page 2 at the top of the page.

9 THE COURT: So that's --

10 MR. MURRAY: So this would be 1 --

11 THE COURT: -- Government's Exhibit 1B.

12 MR. MURRAY: Yes, it is.

13 THE COURT: All right.

14 MR. MURRAY: So I'm going to -- these
15 clips are labeled 1-1, 1-2, 1-3. They're just
16 different clips from Exhibit 1. So 1-1, Your Honor --

17 THE COURT: Is what page?

18 MR. MURRAY: -- starts on page 2 at the
19 top. And this is going to go till about the middle of
20 page 3. And then we'll stop there and --

21 THE COURT: All right. I'm going to
22 mark this up.

23 MR. MURRAY: Okay.

24 THE COURT: All right?

25 MR. MURRAY: And please, if you want --

1 if it's going too quick or you want me to go back,
2 please let me know.

3 THE COURT: I will.

4 MR. MURRAY: Thank you.

5 Can I proceed?

6 THE COURT: Oh, sure.

7 (Begin playing audio clip of 2/10/20 interview:)

8 "AGENT JACKSON: And so we're going to
9 start this interview. It is now 12:19 on Monday,
10 February 10th. Special Agent CJ Jackson, Special
11 Agent Jessica Fear, Forensic Accountant Megan Weber
12 are here. And what's your first name?

13 "MR. HOVAN: Nick.

14 "AGENT FEAR: Nicholas.

15 "MR. HOVAN: Nicholas Hovan,
16 H-O-V-A-N."

17 MR. MURRAY: And can you pause for a
18 second?

19 BY MR. MURRAY:

20 Q The transcript here says "CJ". Who is that
21 speaking when it marks "CJ"?

22 A Myself.

23 Q And then it also has "NH" in the transcript.
24 Who is that?

25 A Mr. Hovan. Nicholas Hovan.

1 Q And then "JF". Who is that?

2 A Special Agent Jessica Fear.

3 Q Thank you.

4 MR. MURRAY: If you could proceed.

5 (Resume playing audio clip of 2/10/20 interview:)

6 "AGENT JACKSON: So the first thing we
7 want to do is we want to make you aware of all your
8 rights. Okay?

9 "MR. HOVAN: Okay.

10 "AGENT JACKSON: So it's protecting
11 you. (Indiscernible) you number one and also for us
12 that you're aware of everything that is about to
13 transpire. Okay? So let me fill the top of this
14 out."

15 THE COURT: I don't see -- what line is
16 that?

17 "AGENT JACKSON: What is
18 (indiscernible) today" --

19 THE COURT: One second.

20 MR. MURRAY: Line 25 or 26 where
21 they're saying the 10th.

22 THE COURT: Okay. Fine.

23 MR. MURRAY: Thank you. And sometimes,
24 Your Honor, I found it -- we tried to pick up the ums
25 and the okays so it skips ahead and that sometimes

1 makes it hard to follow.

2 THE COURT: That's okay. Go -- I don't
3 -- the judge doesn't need any excuses for herself.

4 MR. MURRAY: Thank you.

5 THE COURT: If I can't understand,
6 you'll hear about it very quickly. Okay.

7 (Resume playing audio clip of 2/10/20 interview:)

8 "MR. HOVAN: All right. I still never
9 get used to --

10 "AGENT JACKSON: So this is your advice
11 of rights form. Okay?

12 "MR. HOVAN: Uh-huh.

13 "AGENT JACKSON: So before we ask any
14 questions, you must understand your rights.

15 "You have the right to remain silent.
16 Anything you say can be used against you in court.
17 You have the right to talk to a lawyer for advice
18 before we ask you any questions. You have the right
19 to have a lawyer with you during questioning. If you
20 cannot afford a lawyer, one will be appointed for you
21 before any questioning if you wish. If you decide to
22 answer questions now without a lawyer present, you
23 have the right to stop answering at any time.

24 "Okay?

25 "MR. HOVAN: Okay.

1 "AGENT JACKSON: All right. So if you
2 agree to all of these, I need you to initial each
3 bullet and then sign right here.

4 "MR. HOVAN: I'm obviously like I'd
5 rather do this faster -- I really need a lawyer
6 because I don't really -- I'll tell you everything I
7 know.

8 "AGENT JACKSON: Yeah. Please" --
9 BY MR. MURRAY:

10 Q So, first of all, Agent Jackson, can you
11 describe Mr. Hovan's demeanor up until this point?

12 A Same as before. Just very truthful,
13 forthcoming. Wanted to cooperate. No distress. He's
14 lucid, attentive.

15 Q And in line -- on page 3, line 5, what does
16 Mr. Hovan offer?

17 A He says "I'll tell you everything I know".

18 Q And does he subsequently repeat that offer
19 during the interview?

20 A Numerous times.

21 MR. MURRAY: Can you please proceed?

22 (Resume playing audio clip of 2/10/20 interview:)

23 "AGENT JACKSON: So you know.

24 "MR. HOVAN: No. I know. I'm just
25 saying like I have a right to a lawyer but I'm saying

1 I -- I know what I know and I can tell you everything
2 I know. And I'm talking about telling the truth on
3 this.

4 "AGENT JACKSON: I got you."

5 MR. MURRAY: So can you stop it there?

6 BY MR. MURRAY:

7 Q Was he again indicating he's interested in
8 being cooperative?

9 A Yes.

10 MR. MURRAY: And then we're going to
11 proceed to clip 1-2, Your Honor. It follows right
12 after this in the transcript. It picks up at line 17.

13 THE COURT: Is this the next -- is this
14 page what?

15 MR. MURRAY: It's the same page, Your
16 Honor.

17 THE COURT: Same page. Line 17. Okay.

18 MR. MURRAY: Please go ahead.

19 (Begin playing audio clip G-1-2:)

20 "AGENT JACKSON: All right. So you
21 want to try to walk us through why you think you're
22 here?

23 "MR. HOVAN: Well, I think I'm -- I
24 know why I'm here. Do you want me to start with how
25 this even came about in the first place and how I got

1 involved in this?

2 "AGENT FEAR: Sure.

3 "MR. HOVAN: So I was approached by a
4 friend named Jason Mobur (ph) who was an old client of
5 mine when I used to work in Telecom and
6 (indiscernible) Telecom. And he said that he knew of
7 a supply of oil.

8 "AGENT FEAR: Okay.

9 "MR. HOVAN: He said a supply of oil
10 and that he knew it through a friend -- I don't know
11 the guy's name, a co-worker, a client he works with,
12 to buy wholesale Telecom minutes. And he knows the
13 name of that guy. I never met him. Never did
14 business with him. And that he wanted me to -- he
15 asked if I was like -- he called me and talked about
16 it. So he -- then one thing led to another and he
17 said do you want to -- this guy wants to meet with us.
18 Do you want to meet with him? I said okay. Okay,
19 let's go meet.

20 "So we got into the first meeting and
21 he mentioned kind of what was going on and where the
22 oil was coming from. And he said it was coming from
23 Iran. At that point, we were both very
24 (indiscernible) out. We basically left, went outside.
25 And then I went back to New York.

1 "AGENT FEAR: Who was at that first
2 meeting?

3 "MR. HOVAN: It was me, Jason, Hal (ph)
4 and a woman. I don't remember her name.

5 "AGENT JACKSON: Okay.

6 "MR. HOVAN: And that was the first
7 time I met Hal. I've only met him -- today was the
8 third time. So the second time --

9 "AGENT FEAR: You went back to New
10 York. You were sketched out.

11 "MR. HOVAN: I went back to New York.
12 I was sketched out. Robby and Hal -- Hal called me
13 and said he was coming to New York. So I met him for
14 lunch and Jason came in. And that was the first time
15 we met Robby who was his financial guy. And we had
16 lunch.

17 "I introduced them to -- I said I was
18 going to introduce them to somebody who didn't -- they
19 kicked us out or they were like we don't want to do
20 anything with this. And then I said that they should
21 meet these guys in Dallas.

22 "I stayed back. I never went to
23 Dallas. They went to Dallas to meet up with Nick, Rob
24 and Bill. I never met Rob or Bill until today. I
25 never met Nicky in person until today. I know Nicky

1 through a family -- through my -- a family friend.
2 Well, I know -- my brother knows him. So he said that
3 he's in the oil business. I know he's in the oil
4 business down in Dallas. But I connected them two
5 together. They flew down, Robby and Hal. And they
6 started negotiations down there on this.

7 "Other than that, I've been on their
8 WhatsApp chats to catch up but my role in all of this
9 was just connecting those two parties."

10 MR. MURRAY: You can pause there.

11 BY MR. MURRAY:

12 Q Do you see the line above that, on line 24,
13 it mentions WhatsApp chats?

14 A Correct.

15 Q Do you have an understanding as to WhatsApp
16 chats are?

17 A WhatsApps is kind of like a text messenger
18 service that you utilize primarily through your phone
19 and it's encrypted on both ends.

20 Q And at this point in time, is this the first
21 time they're mentioned?

22 A Yes.

23 Q And are they mentioned repeatedly after
24 this?

25 A Yes.

1 MR. MURRAY: Okay. If we could
2 proceed?

3 (Resume playing audio clip G-1-2:)

4 "MR. HOVAN: Other than that, I mean,
5 obviously, I was going to drop it off at the end of
6 the day which is -- but that was my role in this.
7 I've never gone anywhere else other than New York or
8 Philly. I met up with -- I never -- I came down to
9 Philly again once more. It was just Robby and it was
10 me and Jason to talk to -- I don't remember his name
11 at the moment but one of the investors that was in the
12 room. And we just showed them an LOI. We stayed for
13 15 minutes. It was in the same hotel. And then we
14 left and went back to New York.

15 "At that point, Jason was like -- he
16 told me the next day, like, I don't want to be
17 involved in this anymore. It's very sketchy. And I
18 was -- I felt the same way. I didn't like it. But I
19 felt at this point I was like so -- basically, like I
20 was already involved. And I wasn't really doing
21 anything anymore at this point. I'm like, I'm just
22 here. I'm sure you have the room -- you can -- you
23 can talk -- when they ask like what are your
24 involvements, like I said, my involvement was
25 connecting one side to the other side and that's it.

1 "So, I mean, that's -- I mean, if
2 you -- do you want to -- well, that's the timeline of
3 my events. And then which led to this meeting which
4 was to finalize everything and then -- if there's
5 anything you think I'm leaving out, maybe I forgot
6 something. But you're free to ask me questions on
7 anything and I'll answer them truthfully."

8 MR. MURRAY: That clip ends there.

9 BY MR. MURRAY:

10 Q After Mr. Hovan summarizes facts in the
11 case, what does he offer at the end of that statement?

12 A Pretty much his cooperation. If there's
13 anything that we wanted to ask him, he would
14 truthfully tell us.

15 Q Now I'm going to ask you to listen to the
16 clip that is 1-3.

17 MR. MURRAY: Your Honor, this starts on
18 page 5 on line 21.

19 Are you there, Your Honor?

20 THE COURT: Yeah.

21 MR. MURRAY: Please proceed.

22 (Begin playing audio clip G-1-3:)

23 "MR. HOVAN: Oh, I have no idea. But
24 when we were at that meeting, she was -- it was a
25 meeting but really, we don't want to be involved in

1 this because this is -- doesn't -- and then I -- I
2 don't know. Maybe I just didn't feel like it was as
3 dangerous as it was. And I just -- I wasn't really
4 doing much. I mean, you can read through the WhatsApp
5 chats and you can see my involvement. Like I wasn't
6 doing much. So I was, like, let me just see it
7 through and I should have just cut it off like my --

8 "AGENT FEAR: What was your
9 understanding of what was happening? What" --

10 MR. MURRAY: Stop it, please.

11 BY MR. MURRAY:

12 Q Here, WhatsApp chats are mentioned again by
13 Mr. Hovan, right?

14 A Yes.

15 Q And where are they normally located?

16 A On a phone.

17 Q And at that point in time, what did you
18 understand Mr. Hovan to be offering?

19 A That we can look at all the chats, anything
20 and everything. I mean, he's pretty much saying that
21 he's going to cooperate in any way he can and be
22 truthful.

23 Q Did he volunteer this at this point?

24 A Yes.

25 Q And at this point, have you or your

1 colleagues made any threats or promises to him?

2 A No.

3 Q And was this offer here unprompted?

4 A Yes.

5 Q And after this, were there additional offers
6 to review those materials?

7 A Yes.

8 Q

9 MR. MURRAY: You could proceed.

10 (Resume playing audio clip G-1-3:)

11 "MR. HOVAN: Just cut it off like my --

12 "AGENT FEAR: What was your

13 understanding of what was happening? What were you
14 connecting the parties to? Like, explain it to us as
15 if we didn't know.

16 "MR. HOVAN: I was connecting the
17 supplier to a buyer. That's what I thought. So it
18 was going from the supply to China. And that was -- I
19 didn't even know that it was going to be going to
20 China. I was just connecting them to talk to somebody
21 that said they had supply. So I didn't even know that
22 it was involving China but it started because I never
23 met Nicky (indiscernible) or Rob in my life till
24 today. And I didn't -- I -- before I sent them down
25 to visit them, I had never really known them or had a

1 conversation. And Nicky wasn't my friend or
2 anything. I had never really talked to her before
3 then. I mean, you can look through my history.
4 You'll see that that's exactly when conversations
5 started between any of them."

6 BY MR. MURRAY:

7 Q Now what was it that Mr. Hovan said at the
8 end of that clip?

9 A They can look through the history and see
10 exactly where the conversations were.

11 Q And where did you understand these
12 conversations were located?

13 A In the phone.

14 Q And this was the phone that you had
15 previously taken from him at the time of arrest, is
16 that right?

17 A Correct.

18 Q Or phones, I should say, right? There were
19 multiple phones?

20 A Two.

21 MR. MURRAY: If we could play clip 1-4,
22 please.

23 (Begin playing audio clip G-1-4:)

24 MR. MURRAY: Oh, forgive me, Your
25 Honor. It starts at the beginning of the next page.

1 "AGENT JACKSON: Does the name of these
2 confidantes" --

3 (Pause playing audio clip G-1-4)

4 MR. MURRAY: You can play it. I'm
5 sorry.

6 (Resume playing audio clip G-1-4:)

7 "AGENT JACKSON: Does the name of Aziz
8 Hassanali sound familiar to you?

9 "MR. HOVAN: Oh. So Aziz is -- is that
10 his last name? In New York?

11 "AGENT JACKSON: Well, you tell me. I
12 mean, as far as --

13 "MR. HOVAN: Well, I have a friend
14 named Aziz who we went to go talk to and he was like
15 get the hell out of the office. He was like, I don't
16 want to have anything to do with us.

17 "AGENT JACKSON: Okay. You said we
18 went to talk to him. Who --

19 "MR. HOVAN: Hal and Robbie --

20 "AGENT JACKSON: Okay.

21 "MR. HOVAN: -- and Jason.

22 "AGENT JACKSON: Okay.

23 "MR. HOVAN: That's who we met in New
24 York. And I said you might want to talk to him to see
25 -- just kind of tell him the opportunity. And he said

1 he heard the opportunity for five minutes and then he
2 was like, let's get the hell out of here.

3 "AGENT FEAR: So you had the potential
4 (indiscernible)?

5 "MR. HOVAN: He didn't know what he was
6 --

7 "AGENT FEAR: From your standpoint.

8 "MR. HOVAN: Yes. And he was only
9 involved because -- oh. He had a co-worker named Arif
10 (ph) who I was talking to. And he was -- and then I
11 guess it was -- he was just like -- he was like I
12 don't want to do -- have anything to do with this.
13 He's like, if you're smart, you shouldn't have
14 anything to do with this either. And I
15 (indiscernible).

16 "AGENT JACKSON: So that was Aziz and
17 (indiscernible). What's his (indiscernible)? Arif?

18 "MR. HOVAN: Arif. Arif, yeah.

19 "AGENT JACKSON: You know what Arif's
20 last name is?

21 "MR. HOVAN: I don't.

22 "AGENT JACKSON: Okay.

23 "MR. HOVAN: He's in my WhatsApp. I
24 think as Arif. Maybe his last name is in there.

25 "AGENT JACKSON: Okay.

1 "MR. HOVAN: I can show it to you.

2 "AGENT JACKSON: Was he

3 (indiscernible)?

4 "MR. HOVAN: No. He was in London. I
5 never met him in my life."

6 MR. MURRAY: Stop for a second there.

7 BY MR. MURRAY:

8 Q So in line -- on page 7, on line 3, what are
9 you asking about?

10 A If he knows someone named Arif and what
11 Arif's last name is.

12 Q Now, by the way, were you a case agent on
13 the case?

14 A No.

15 Q So were you intimately familiar with all the
16 facts of the case?

17 A No.

18 Q In this clip, you're asking about a number
19 of names. How did you know to ask about those names?

20 A The case agent gave me a prep packet to just
21 ask questions about certain names.

22 Q So were you assisting with a series of
23 arrests that had happened on this day?

24 A Correct.

25 Q And you ask about Arif. In response to

1 that, on line 9, what does Mr. Hovan say?

2 A He says "He's in my WhatsApp. I think it's
3 Arif. Maybe his last name is in there." And then he
4 goes on to say "I can show you -- show it to you".

5 Q Okay. And at that time, where did you
6 understand him to be showing you these messages from?

7 A Within his phone.

8 Q Okay. And was this another offer by Mr.
9 Hovan to show you things on his phone?

10 A Yes.

11 MR. MURRAY: If you could proceed,
12 please.

13 (Resume playing audio clip G-1-4:)

14 "MR. HOVAN: -- from my life.

15 "AGENT JACKSON: Okay.

16 "AGENT FEAR: How do you know him?

17 "MR. HOVAN: Aziz?

18 "AGENT FEAR: Arif.

19 "MR. HOVAN: Arif I know through Aziz
20 just from something else before. My brother -- he
21 went to -- Aziz went to college with my brother at
22 MIT.

23 "AGENT FEAR: Okay."

24 (Pause playing audio clip G-1-4)

25 BY MR. MURRAY:

1 Q So we're now about five minutes
2 approximately into this interview. You previously
3 describe Mr. Hovan's demeanor. Has it changed any
4 way?

5 A No, sir.

6 Q Is he still cooperative?

7 A Yes.

8 Q Is he still offering to show you things on
9 his phone?

10 A Yeah, up to this point. Showing what's in
11 the WhatsApp, directing us.

12 Q Did he appear to be intelligent when you
13 were having this conversation?

14 A Yes.

15 Q And was he responsive to your questions?

16 A Yes.

17 Q And was he sometimes providing unprovoked
18 information?

19 A Numerous times.

20 THE COURT: Listen, is it very hot in
21 here, Jim? Are you all very warm?

22 MR. MURRAY: I'm not cool, Your Honor,
23 but I assume that it's --

24 THE COURT: Well, listen. I have no
25 problem if you pull your ties down or whatever you do

1 or take your jackets off. That's fine. Better you
2 shouldn't be hot.

3 MR. MURRAY: I'm comfortable.

4 THE COURT: Warm.

5 MR. MURRAY: Thank you.

6 THE COURT: Okay. Sure.

7 MR. MURRAY: Yes. Absolutely.

8 THE COURT: Okay. If anyone feels that
9 way, please -- you know, I never forget the first
10 hearing I had in the Advil (ph) case. Everybody
11 practically stripped.

12 MR. MURRAY: Well, thank you, Your
13 Honor, for your consideration.

14 THE COURT: And one of them said, does
15 she really mean it and the other one said, yep, you'll
16 do better. You'll do better.

17 MR. MURRAY: Thank you.

18 THE COURT: No. Seriously. I don't
19 want you -- it's very hot. Your job is hard enough.
20 You don't need this.

21 MR. MURRAY: Thank you very much.

22 THE COURT: Yeah. You, too, Jim. Take
23 your --

24 (Pause)

25 THE COURT: Oh, okay. All right.

1 Okay. You may continue.

2 MR. MURRAY: Thank you.

3 So, Your Honor, we're now going to pick
4 up with clip 1-5. And this picks up right after this
5 one on line 32 of page 7.

6 MR. MURRAY: If we can proceed.

7 (Begin playing audio clip G-1-5:)

8 "AGENT JACKSON: What about a
9 (indiscernible). Does the name Adis Kan (ph) --

10 "MR. HOVAN: Never heard of it.

11 "AGENT JACKSON: Never heard of Adis
12 Kan. Okay.

13 "MR. HOVAN: I guess I've only talked
14 to Hal about the supplies. I don't know what he does
15 when he goes over there. I've never been involved in
16 that. You can look at my passport. I've never gone
17 to the Middle East in my life. I just -- I don't -- I
18 won't be (indiscernible). If I could, I would. So
19 I'll tell you everything I know.

20 "AGENT JACKSON: Okay."

21 BY MR. MURRAY:

22 Q And again, what does Mr. Hovan offer at the
23 end of that clip?

24 A At this point, he offered to look at his
25 passport and again reiterated that I'll tell you

1 everything I know.

2 MR. MURRAY: Now, Your Honor, we're
3 going to skip forward a bit in this to page 11. This
4 is going to be clip 1-6. And we're going to pick up
5 at line 17 of the transcript.

6 THE COURT: Okay.

7 MR. MURRAY: All right.

8 (Begin playing audio clip G-1-6:)

9 "AGENT JACKSON: Everyone has their own
10 role in this. Like we said, we just want to know
11 yours (indiscernible).

12 "MR. HOVAN: Yeah. And this -- I'm
13 telling you my exact role right now. I'm really
14 telling you. This is all the times I've had contact
15 with anybody, like in person. Like you -- I'm sure
16 you have that room -- like if you could hear in the
17 room. Like they say go around the table and say what
18 you bring. Literally, what I brought was put in --
19 outside of the table was outside of the table and
20 that's it. I don't know anything about the buy side
21 of this whole sale. I don't know any of the names. I
22 don't know -- I don't know who was buying in China or
23 anything like that. I just know it's coming from
24 those two countries.

25 "AGENT JACKSON: Got you.

1 "MR. HOVAN: And I know the two people
2 that -- Bill's the name guy for China and Hal's the
3 main guy for (indiscernible) supply side on my end.
4 But I've never been in another country. I don't know
5 who was buying -- who's the people on the other side.

6 "AGENT FEAR: Okay.

7 "MR. HOVAN: So -- but I'll help you as
8 much as I can in trying to find them. I really --

9 "AGENT JACKSON: No. We appreciate
10 that.

11 "MR. HOVAN: Really. Like I want to be
12 100 percent cooperative for whatever you need.

13 "AGENT JACKSON: Okay.

14 "AGENT FEAR: Appreciate it."

15 BY MR. MURRAY:

16 Q So what does Mr. Hovan say he'll do at the
17 end of that clip?

18 A He said he'd be 100 percent cooperative for
19 whatever we need. I mean, (indiscernible), even the
20 parts that we -- he might not know about, he would be
21 willing to help us find out.

22 Q And is that consistent with how he'd been
23 acting so far during this interview?

24 A Completely.

25 Q Now looking at the bottom of page 12, at

1 line 38, I'm going to ask Agent Vacanti to play clip
2 1-7.

3 (Begin playing audio clip G-1-7:)

4 "AGENT JACKSON: Yeah. This is not --
5 (indiscernible).

6 "MR. HOVAN: Oh, okay.

7 "AGENT JACKSON: Rob Thwaite.

8 "MR. HOVAN: Yeah. So he was at the
9 end of the table. That was the first time I ever met
10 him today. And I was late to the meeting so I didn't
11 even get to introduce myself --

12 "AGENT JACKSON: Okay.

13 "MR. HOVAN: -- to anybody. But he --
14 he was friends with Nick and already worked with
15 Nickie. So I never really met Rob. He just -- I
16 introduced Nickie and he introduced Rob and Bill. So
17 I've never met Rob or Bill until today in my life.

18 "AGENT JACKSON: Okay. Do you know --
19 what's Nick's last name?

20 "MR. HOVAN: Fuchs.

21 "AGENT JACKSON: Okay. I got you. Did
22 you know another Nick, like a (indiscernible) Hovan?

23 "MR. HOVAN: I'm Nick Hovan.

24 "AGENT JACKSON: Oh, I'm sorry. I'm
25 writing the name -- apologies. My apologies. Yeah.

1 I'm looking at Nick and Nick and --

2 "MR. HOVAN: No. There are two Nicks.

3 Nick and -- it's funny because we probably have the
4 same kind of involvement 'cause he's like -- he was
5 just -- we were just liaisons between the two sides.

6 "AGENT JACKSON: Yeah.

7 "MR. HOVAN: Because, like, I just knew
8 Nick and" --

9 (Pause playing audio clip G-1-7)

10 BY MR. MURRAY:

11 Q So in that section, there's a bunch of
12 laughter, right? What had happened?

13 A I got Mr. Hovan's name wrong. And that was
14 consistent for over the course of the interview. I
15 mean, there was several times that we had shared
16 laughs, (indiscernible) phones, talking about money.
17 So that was not the first and last time that we shared
18 a laugh.

19 Q So you were laughing at the fact that you
20 were asking Mr. Hovan who Nick Hovan --

21 A Mr. Hovan was --

22 Q -- was.

23 A -- correct.

24 Q And am I right, too, that you were doing
25 that because you weren't the case agent and you were

1 reading from a list of names?

2 A Correct.

3 Q And you made a mistake, correct?

4 A Correct.

5 MR. MURRAY: If you could proceed.

6 (Resume playing audio clip G-1-7:)

7 "MR. HOVAN: So the other side got --

8 "AGENT FEAR: How did you know him
9 again?

10 "MR. HOVAN: I knew him through -- my
11 brother used to tutor him when he was a kid and he was
12 just like this guy works in the oil industry so you
13 might want to talk to him. My brother has no
14 involvement in this. Like --

15 "AGENT JACKSON: Okay.

16 "MR. HOVAN: But he's just like -- he
17 was like, I know this guy. He's in the oil industry.
18 You should talk to him. So I was like, I told him and
19 I said there might be an opportunity for -- for like
20 (indiscernible). And then he was like -- and then I
21 was like this is the guy's number. And they called
22 and they talked. But like I never -- I wasn't part of
23 that conversation. It was a call that I wasn't on.
24 And then they were just talking directly the whole
25 time. It was never -- I was just kind of like -- I

1 made the introduction and then they started -- the two
2 sides started talking directly about it.

3 "And I'm on these like group chats but,
4 like, you can see, I don't contribute anything to
5 them.

6 "AGENT JACKSON: That's the WhatsApp?

7 "MR. HOVAN: Yeah. And again, you can
8 take them. You can look at them. I don't really care
9 'cause like, you can see the involvement. There's
10 like three chats.

11 "AGENT JACKSON: Okay."

12 (Pause playing audio clip G-1-7)

13 BY MR. MURRAY:

14 Q So in line 6 on page 14, Mr. Hovan mentions
15 group chats. And then what do you follow up and ask
16 about?

17 A Clarification. Which group chats we're
18 talking about.

19 Q Okay. And in response to that
20 clarification, what does Mr. Hovan offer?

21 A That we can look at them and he doesn't
22 really care. Just to show what his involvement was.

23 Q Okay. At that point in time, when you asked
24 about them, had you asked for permission to look at
25 them?

1 A No.

2 Q Was that an unprompted offer?

3 A Yes.

4 Q And those chats, where did you understand
5 them to be located?

6 A In his phone.

7 MR. MURRAY: Now, Your Honor, I'm going
8 to ask that we play Exhibit -- or clip 1-8. It starts
9 on page 15 at line 38.

10 (Begin playing audio clip G-1-8:)

11 "AGENT JACKSON: So if everything went
12 as planned today, what were you actually going to
13 gain?

14 "MR. HOVAN: From what I was told, I
15 was going to get 2.5 percent of the profit. So it was
16 never written down anywhere unless it was. But that's
17 what I was told I was going to get.

18 "AGENT JACKSON: Okay. Do you have any
19 idea what that would have actually amounted to?

20 "MR. HOVAN: No idea.

21 "AGENT JACKSON: Okay.

22 "AGENT FEAR: Okay.

23 "AGENT JACKSON: A good amount of
24 money?

25 "MR. HOVAN: I really don't -- I don't

1 know. I didn't know like how much was actually going
2 or anything because I wasn't involved in that. I know
3 that the idea was for a lot but like I wasn't involved
4 in the details.

5 "AGENT FEAR: So you don't know what
6 the quantity was that they were working with?

7 "MR. HOVAN: I could guess but like I
8 don't know. Like, I should be telling the truth and I
9 don't really know the -- I don't really know the exact
10 numbers.

11 "AGENT FEAR: Okay.

12 "AGENT JACKSON: Okay. And you don't
13 have anything -- like if you took an educated guess --
14 I'm not saying you know the exact amount.

15 "MR. HOVAN: I know from the meeting
16 that the initial -- the initial shipment was supposed
17 to be \$500,000. And then it was supposed to ramp up
18 from there. But I don't know the specific numbers
19 because that wasn't -- I wasn't involved in that part.

20 "AGENT JACKSON: Okay. So you weren't
21 involved in that part but you just knew you were going
22 to get a percentage of it.

23 "MR. HOVAN: Yes.

24 "AGENT JACKSON: Okay. Hal reached out
25 to me and I said -- I said, so I know this is going

1 on. I said, like, so like what is -- you know,
2 obviously, (indiscernible) like this should be --
3 you're going to -- (indiscernible) I guess some type
4 of compensation. So I said whatever you think is
5 fair. And he said 2.5 percent. So -- I never really
6 expected to get anything out of this. I thought it
7 was kind of just like -- like finding this guy, it
8 doesn't actually happen. You know, so I never really
9 talked about it.

10 "AGENT JACKSON: It seems like an
11 unnecessary risk to (indiscernible) --

12 "MR. HOVAN: It's like I was in the
13 car. I said -- this is a -- it was a side thing I was
14 doing that was a risk that I never should have
15 entertained in the first place.

16 "AGENT JACKSON: Right.

17 "MR. HOVAN: It was nothing I was ever
18 involved in until I was introduced to it.

19 "AGENT JACKSON: Right.

20 "MR. HOVAN: And I just like -- if I
21 could go back in time and just not do this, it would
22 be the easiest decision of my life. But obviously, I
23 made a mistake and I was introduced to the wrong
24 people and followed through with it. And if I could
25 take it back, I would. But the best thing I can do is

1 just tell you guys everything I know and the truth.

2 "AGENT JACKSON: Right."

3 (Pause playing audio clip G-1-8)

4 BY MR. MURRAY:

5 Q Now, Agent Jackson, was this another offer
6 by Mr. Hovan to cooperate?

7 A Yes.

8 Q And at this time, can you describe his
9 demeanor?

10 A It was the same. Lucid, articulate. Again,
11 offering to cooperate in every way he could.

12 Q And in this section but at the end, on line
13 approximately 20 of page 17, did Mr. Hovan say why he
14 was being so cooperative?

15 A Pretty much that he just wants to tell the
16 truth. If he could take it back, he would and the
17 best thing is to just be truthful about it.

18 MR. MURRAY: So turning to --

19 THE COURT: One second. Jim, let me
20 speak to you a second, please.

21 (Pause)

22 MR. MURRAY: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. MURRAY: Turning to page 20,
25 starting at line 28, we're going to play clip 1-9.

1 (Begin playing audio clip G-1-9:)

2 "AGENT FEAR: The purpose of today's
3 meeting was?

4 "MR. HOVAN: Just to finalize
5 everything, I think. I had a -- I had a bad -- this
6 morning when I left, I had a bad feeling anyway. But
7 --

8 "AGENT JACKSON: Yeah.

9 "MR. HOVAN: It's just -- you know,
10 it's just I never really should have gotten involved
11 in this in the first place. I'm so mad at my friend
12 for even bringing me into this but I'd like -- I
13 should have just backed out. And I just feel like it
14 just moved along without me. And then we just got so
15 far in the point where we're like -- I didn't really
16 know what was going on. And it was -- and, like, it
17 just seemed like, okay, I could just sit here and do
18 nothing and it'll work -- and like it'll -- and, you
19 know, that was the wrong mentality to have. I mean, I
20 don't know what I should have done. Should I have
21 gone to the FBI myself? Or like -- but I think the
22 best thing I can do is just tell you the exact truth
23 and every single thing I know."

24 (Pause playing audio clip G-1-9)

25 BY MR. MURRAY:

1 Q And at the end there, what does Mr. Hovan
2 say was the best thing for him to do?

3 A To tell the truth and tell us everything he
4 knows.

5 Q Now I'm going to play you a longer clip that
6 starts in the middle of page 21 at line 22. And we're
7 going to play the first question and then I'm going to
8 ask you a couple questions. So I'm going to ask Agent
9 Vacanti to go quickly and then stop on that one.

10 MR. PICANTE: 1-10?

11 MR. MURRAY: On, yeah, 1-10, please.

12 (Begin playing audio clip G-1-10:)

13 "AGENT FEAR: Is there anything that we
14 haven't asked you that would be helpful for us to know
15 about this deal or these people?"

16 (Pause playing audio clip G-1-10)

17 MR. MURRAY: Can you pause there.

18 BY MR. MURRAY:

19 Q So you hear at line 23 and 24 on page 20?

20 A Yes.

21 Q That's Agent Fear asking the question,
22 right?

23 A Correct.

24 Q She's asking an open-ended question here,
25 right?

1 A Yes. That's what we usually do at the end
2 of an interview.

3 Q You've gone through a lot of the facts and
4 now are asking an open-ended question. Is that right?

5 A Correct.

6 Q And then over the next approximately half a
7 page of the transcript, what happens? What does Mr.
8 Hovan say here?

9 A Again, just being -- being truthful. Saying
10 he's going to cooperate in any way he can. Suggests
11 the WhatsApp conversations again. And he goes -- it
12 sounds like he goes a little bit further because he
13 says "WhatsApp conversations and things like that"
14 were all going to be kind of like fair game.

15 Q So after the open-ended question's answered,
16 does he offer the WhatsApp messages and other
17 messages?

18 A Yes.

19 Q And then do you proceed with a discussion
20 about it?

21 A Yes.

22 Q All right. We're going to listen to that.
23 But before we go, do you -- what was Mr. Hovan's
24 demeanor at this point in time?

25 A The same. It was a -- the same forthright,

1 lucid, articulate. Still cooperative.

2 MR. MURRAY: So if we could just start
3 from the beginning of that clip, that would be great.

4 (Begin playing audio clip G-1-10:)

5 "AGENT FEAR: Anything else that we
6 haven't asked you that would be helpful for us to know
7 about this deal or these people?

8 "MR. HOVAN: No. Like I said, I -- the
9 -- I knew everybody -- like I kind of met everyone in
10 that room by name except for the one person next to
11 the other investor. I never met him before. But
12 other than that, I don't -- I don't really know how
13 much more I know. Like I said, I don't really know
14 that much. You'll probably get a lot more information
15 from a lot of people in the room. But, like, I'll
16 answer any question that I can answer or anything,
17 like -- but I can try and answer. Like I said, I got
18 to tell the truth. And I'm not going to -- I'm not
19 going to lie to you to try and help my case out any."

20 (Pause audio clip G-1-10)

21 BY MR. MURRAY:

22 Q Stopping there. At about lines 31, 32, 34,
23 what does Mr. Hovan offer to do here?

24 A Still answering questions, be truthful and
25 help in any way he can.

1 Q And that was a repetition of the many
2 previous times he'd done that earlier, correct?

3 A Correct.

4 MR. MURRAY: If you could proceed.

5 (Resume playing audio clip G-1-10:)

6 "MR. HOVAN: But all I can do is tell
7 you the truth of my involvement and what I know from
8 involvement of other people. And like I said,
9 (indiscernible) looking at WhatsApp conversations or
10 things like that because I -- they're fair game for
11 (indiscernible) involvement but I'll point you to the
12 ones -- I'll point you to every single conversation
13 I've ever had.

14 "AGENT JACKSON: All right.

15 "MR. HOVAN: Because" --

16 (Pause playing audio clip G-1-10)

17 BY MR. MURRAY:

18 Q So looking at lines 40 on page 21 through 2
19 on page 22, what --

20 THE COURT: What line? Say that again.

21 MR. MURRAY: Yes, Your Honor. 40 on
22 page 21 --

23 THE COURT: Okay.

24 MR. MURRAY: -- to line 2 on page 22.

25 BY MR. MURRAY:

1 Q So, Agent Jackson, in that part of the
2 dialogue, what does Mr. Hovan say there?

3 A Pretty much that he's going to be truthful,
4 tell us the truth. We can look at the WhatsApp
5 conversations and things like that and everything's
6 fair game. He'll point us out to every single
7 conversation he's ever had. So pretty much offering
8 to point us to where he thinks we would like to look
9 at.

10 Q And at that point in time, had yourself or
11 Agent Fear or the other FBI employee in the room
12 raised the topic of those messages?

13 A No.

14 Q And when he does that, what does he say he's
15 willing to point you to?

16 A Every single conversation that he's had.

17 Q Now at this point in time, had there been
18 any mention of a search warrant?

19 A No.

20 Q Had there been any mention of any other
21 means by which the FBI might get these messages?

22 A No.

23 Q Now was this the first time that Mr. Hovan
24 had offered to show you these messages?

25 A No.

1 Q And at this point in time, did you consider
2 that he provided to consent to search his phones?

3 A Yes.

4 Q After he gave you this oral consent, what
5 did you do?

6 A I was looking for an actual consent form for
7 Mr. Hovan to read through to make sure he is
8 comfortable with giving his consent and that he knows
9 that if he is, that he could take it back at any time.
10 So I just wanted to memorialize it in writing.

11 Q And is that one of the frequent practices
12 that you follow as part of the FBI?

13 A Yes.

14 MR. MURRAY: Now if you could proceed.

15 (Resume playing audio clip G-1-10:)

16 "MR. HOVAN: Personally, like, I don't
17 think anything really hurts my case because, like I
18 said, I pointed two parties together. And I should
19 have just backed out when I first got the call to be
20 involved in this (indiscernible).

21 "AGENT FEAR: Do your phones -- do they
22 have passcodes?

23 "MR. HOVAN: My iPhone does. But
24 that's my work phone. There's nothing on there. I
25 mean, you can look at it but there's nothing on there.

1 "AGENT FEAR: Okay. Yeah. I mean,
2 we're going to look at the phones for (indiscernible).
3 And it's usually easier if --

4 "MR. HOVAN: Yeah. I don't know -- I
5 actually don't know these iPhones. But I can just
6 open it with my face and you can turn off the passcode
7 if you want. There's no passcode on this one.

8 "AGENT JACKSON: Okay. So" --

9 MR. MURRAY: Okay.

10 BY MR. MURRAY:

11 Q Now from lines approximately 14 to lines 27
12 on page 22, Agent Fear asks a series of questions,
13 correct?

14 A Correct.

15 Q What's the topic of her questioning?

16 A The cell phones and passcodes.

17 Q Why was she asking about passcodes for the
18 phones?

19 A Because since Mr. Hovan was going to give us
20 consent, I mean, we would need the passcodes to
21 actually look through the phones, to get into them.

22 Q Now in line 19, Agent Fear begins talking
23 and she's cut off. What did you understand her to be
24 saying in that line?

25 A I took that as we're going to look at both

1 phones since you're giving us consent and that we want
2 to have -- you know, we're going to -- want to have a
3 thorough investigation. So we would want to look at
4 both the phones.

5 Q And at this point in time, had there been
6 any mention of a search warrant?

7 A No.

8 MR. MURRAY: If you could proceed.

9 (Resume playing audio clip G-1-10:)

10 "AGENT JACKSON: What we're going to do
11 is I'm going to have you, if you're good with us
12 looking through your phones, I'm going to have you
13 sign a consent form.

14 "MR. HOVAN: Okay.

15 "AGENT JACKSON: Okay?

16 "MR. HOVAN: Yeah.

17 "AGENT JACKSON: All right. So" --

18 MR. MURRAY: Can you stop that?

19 (Pause playing audio clip G-1-10)

20 BY MR. MURRAY:

21 Q The topic of conversation pivots, is that
22 right?

23 A Yes.

24 Q Do you take over the questioning?

25 A Yes.

1 Q What are you asking him about?

2 A Just reiterating what -- or just telling
3 him, like, look, if you are comfortable with us --
4 comfortable giving us consent to look through your
5 phones, which, at that point, seemed like he was very
6 comfortable because he had offered it numerous times
7 through the interview, that I wanted him to sign a
8 consent form so he actually is advised of his rights.

9 Q And in line 34 on page 22, do you ask him
10 whether it's okay to sign the consent form?

11 A Yes. I asked him if you're okay with it,
12 and he agreed that he was.

13 Q Okay. And I'm going to just ask you to go
14 back just a few lines because I believe there's a
15 knock, knock in the audio. We'll play it. And at the
16 end, I'm going to ask you what that is. Just a few
17 lines. But not that far. Just --

18 (Resume playing audio clip G-1-10:)

19 "AGENT JACKSON: So what we're going to
20 do is I'm going to have you -- if you're good with us"
21 --

22 (Pause playing audio clip G-1-10)

23 MR. MURRAY: Starting with, yeah, okay,
24 "So we're going to do this". It looks like you're
25 there. Sorry.

1 (Resume playing audio clip G-1-10:)

2 "AGENT JACKSON: -- "with us looking
3 through your phones, I'm going to have you sign that
4 consent form.

5 "MR. HOVAN: Okay.

6 "AGENT JACKSON: Okay?

7 "MR. HOVAN: Yeah?

8 "AGENT JACKSON: All right. So" --

9 MR. MURRAY: Would you stop, please?

10 "AGENT JACKSON: -- "this is a iPhone
11 and this is your work phone."

12 BY MR. MURRAY:

13 Q There's a knock, knock when you're talking
14 about the consent form. What's going on there?

15 A Just the consent form was on the table and
16 I'm just tapping -- putting my finger on my pen and
17 showing that this is the consent form.

18 Q Okay.

19 MR. MURRAY: If you could proceed now?

20 (Resume playing audio clip G-1-10:)

21 "AGENT JACKSON: Right here. Okay.
22 What type of iPhone is it?

23 "MR. HOVAN: iPhoneX.

24 "AGENT JACKSON: And does it have a PIN
25 associated with it?

1 "MR. HOVAN: Yeah. It's 0510HO -- H --

2 "AGENT JACKSON: Sorry. I'm sorry.

3 0510 --

4 "MR. HOVAN: 10. It's my birthday.

5 And then H-O-V-A. It's lower case.

6 "AGENT JACKSON: All right. All lower

7 case?

8 "MR. HOVAN: Yeah. And there's no

9 password on my other phone.

10 "AGENT JACKSON: All right. So

11 0510hova?

12 "MR. HOVAN: Uh-huh."

13 MR. MURRAY: Can you pause?

14 BY MR. MURRAY:

15 Q So what are you doing at this point of the
16 interview?

17 A I'm filling out the consent portion as far
18 as the phones, what the passwords were, types of
19 phones they are.

20 Q So looking at Government Exhibit 3
21 simultaneously, is this -- which portion of Exhibit 3
22 on the consent form are you filling out?

23 A Right under number 1, under bullet 1.

24 Q And is this when you were filling out the
25 two phones? Is that right?

1 A Correct.

2 Q And we see a crossout with respect to the
3 password. What was happening there?

4 A As he was giving me his password, I
5 automatically assumed it was capitals. But when I
6 verified with him, he said it was lower case. So I
7 scratched out the capitals and filled in as lower.

8 Q Okay. And looking back at the transcript,
9 did he tell you it was lowercase unprompted?

10 A Yes.

11 Q If you look --

12 THE COURT: Where are we?

13 MR. MURRAY: Thank you. I'm flipping
14 back. Forgive me, Your Honor.

15 BY MR. MURRAY:

16 Q On page 23, on line 11, does Mr. Hovan, as
17 you're writing out the incorrect password with capital
18 letters, tell you it's lowercase and correct you?

19 A Yes. Unprovoked, he told me it's lowercase
20 and then I confirmed with him. I said, "All right.
21 All lowercase?" "Yes."

22 Q Okay. And at this point, where are you
23 sitting vis-à-vis each other?

24 A Still across from each other.

25 Q Okay.

1 MR. MURRAY: Can you please proceed?

2 (Resume playing audio clip G-1-10:)

3 "MR. HOVAN: And then HOV" --

4 THE COURT: Tell me where you are.

5 (Pause playing audio clip G-1-10)

6 MR. MURRAY: Let's see, Your Honor. We
7 are at line 13.

8 THE COURT: Of page 24.

9 MR. MURRAY: 23, Your Honor.

10 THE WITNESS: 23.

11 THE COURT: Still on -- oh, okay. So
12 we're going back. Okay.

13 (Resume playing audio clip G-1-10:)

14 "MR. HOVAN: Lowercase.

15 "AGENT JACKSON: All right. All
16 lowercase?

17 "MR. HOVAN: Yeah. And there's no
18 password on my other phone.

19 "AGENT JACKSON: So 0510hova?

20 "MR. HOVAN: Uh-huh.

21 "AGENT JACKSON: Okay. And this is
22 your work phone.

23 "MR. HOVAN: Yep.

24 "AGENT JACKSON: All right. And the
25 other one?

1 "MR. HOVAN: There's no password.

2 "AGENT JACKSON: All right. Well, what
3 kind of phone?

4 "MR. HOVAN: (Indiscernible).

5 "AGENT JACKSON: So is that AT&T?
6 Samsung?

7 "MR. HOVAN: Samsung. Samsung.

8 "AGENT JACKSON: Okay.
9 (Indiscernible).

10 "MR. HOVAN: There (indiscernible)
11 phones anyway.

12 "AGENT JACKSON: That's why I was
13 (indiscernible).

14 "MR. HOVAN: (Indiscernible).

15 "AGENT JACKSON: All right.

16 "MR. HOVAN: I used to have an AT&T.
17 (indiscernible) phones.

18 "AGENT JACKSON: Yeah.

19 "AGENT FEAR: Yeah. I remember that.

20 "AGENT JACKSON: So the Samsung doesn't
21 have a password on it.

22 "MR. HOVAN: No password. And do you
23 want me to -- I can show you -- I can point you to all
24 the WhatsApp conversations that are relevant to you.

25 "AGENT FEAR: Sure

1 "MR. HOVAN: I could save you time.

2 And feel free to look through everything but I'll show
3 you that I have more important ones.

4 "AGENT FEAR: Okay."

5 (Pause playing audio clip G-1-10)

6 BY MR. MURRAY:

7 Q At the end there, Mr. Hovan makes a series
8 of offers. What does he offer to do?

9 A Offering to show us -- point us to WhatsApp
10 conversations and which ones he thinks is prevalent to
11 us and save us some time. And pretty much saying feel
12 free to look through everything but he'll show us what
13 he thinks is the important ones.

14 Q And was there any reticence by Mr. Hovan at
15 that point in time or before?

16 A No.

17 Q And at this point in time, was there any
18 doubt in your mind that he was consenting to the
19 search of these phones?

20 A No.

21 Q At this point in time, had there been any
22 mention of a search warrant?

23 A No.

24 MR. MURRAY: Can you please proceed?

25 (Resume playing audio clip G-1-10:)

1 "AGENT FEAR: It doesn't have one.

2 "AGENT JACKSON: So this one has on
3 password. And iPhoneX -- can you get to it through --
4 if you can't use your face, can you just put the
5 passcode in and it's going to let you in the phone?

6 "MR. HOVAN: It should work 'cause I'm
7 -- I think if you just do it a couple times it should
8 but let me just turn off the password (indiscernible).
9 And like I said, there's nothing on it. The password
10 didn't work.

11 "AGENT FEAR: I think it was just not
12 taking (indiscernible).

13 "MR. HOVAN: Okay.

14 (Pause)

15 "AGENT FEAR: Yeah. It's confusing.
16 Your --

17 "MR. HOVAN: Samsung -- do you know
18 (indiscernible)?

19 "AGENT FEAR: (Indiscernible).

20 "MR. HOVAN: Yeah.

21 "AGENT FEAR: Let's see.

22 "MR. HOVAN: So like I said" --

23 (Pause playing audio clip G-1-10)

24 BY MR. MURRAY:

25 Q The dialogue there is a little confusing.

1 What's going on as there's some pauses in the
2 dialogue?

3 A I believe they're trying to figure out how
4 to take the passcodes off the phones.

5 Q So for future access to the phones?

6 A Correct.

7 MR. MURRAY: Thank you.

8 (Resume playing audio clip G-1-10:)

9 "MR. HOVAN: I never did anything with
10 the work phone so you (indiscernible).

11 "AGENT JACKSON: Okay.

12 "AGENT FEAR: Okay. It's --

13 "MR. HOVAN: I'm not going to get that
14 back for a long -- I'm not getting that back for a
15 while --

16 "AGENT FEAR: I think it might be off.
17 Let's try it.

18 "AGENT JACKSON: I don't know. It
19 depends on what they find on there. If they don't, so
20 I can't really say (indiscernible). I don't want to
21 give you a date --

22 "AGENT FEAR: All right. I'll let you
23 get it (indiscernible) in the end.

24 "MR. HOVAN: I'm still being recorded,
25 yeah?

1 "AGENT JACKSON: Yes.

2 "MR. HOVAN: So what are the -- what
3 are the next steps, I guess -- can I ask that? Or --

4 "AGENT JACKSON: Yes. Well, let me get
5 through this real quick.

6 "AGENT FEAR: We're still trying to
7 turn the phone off. But I mean, the passcode works."

8 THE COURT: What page -- where are you?

9 MR. MURRAY: Please pause it.

10 (Pause playing audio clip G-1-10)

11 MR. MURRAY: We're at the top of page
12 26, Your Honor.

13 THE COURT: Oh. That's --

14 MR. MURRAY: If we could start with the
15 line that starts with "All right", which is line 9.
16 It will help us follow.

17 THE COURT: Well, you've been doing
18 everything in between.

19 MR. MURRAY: Yes. You're right.

20 THE COURT: Okay.

21 MR. MURRAY: Exactly, Your Honor. I'm
22 just trying to give you --

23 THE COURT: Okay.

24 MR. MURRAY: -- the line --

25 THE COURT: Yeah. So that I can know

1 where we are. Okay. Just be helpful when I write --
2 if I decided to write something --

3 MR. MURRAY: Of course.

4 THE COURT: -- where it is.

5 MR. MURRAY: And let me -- before we go
6 ahead, just for the Court, this clip's almost over.

7 BY MR. MURRAY:

8 Q Agent Jackson, looking at lines 12 through
9 16, what's happening there when those words are
10 spoken?

11 A Mr. Hovan is signing that consent form and
12 asking what the date is.

13 Q Okay. And we hear a sound. Looks like
14 something run across the table. Do you recall what
15 that sound was in this section?

16 A I believe the signature. I have a pen on
17 the table.

18 MR. MURRAY: If you could proceed.

19 (Resume playing audio clip G-1-10:)

20 "AGENT FEAR: But I mean, the passcode
21 works which is fine.

22 "AGENT JACKSON: Signature and date.

23 "MR. HOVAN: The 10th?

24 "AGENT JACKSON: Yes. 2/10/20. Thank
25 you.

1 "AGENT FEAR: It's not letting me --
2 but you gave us it so for right now, that should be
3 fine.

4 "MR. HOVAN: Yeah.

5 "AGENT FEAR: Can you show us which
6 strings you were talking about on this
7 (indiscernible)?

8 "MR. HOVAN: There's nothing on my work
9 phone. I don't have WhatsApp on there.

10 "AGENT FEAR: Oh."

11 (Pause playing audio clip G-1-10)

12 BY MR. MURRAY:

13 Q So there's a mention on lines 14 and line 16
14 about the 10th and February 10th, 2020. Why is that
15 being discussed?

16 A It was the date of the interview.

17 Q So looking at Exhibit 3, there's a date
18 written down. Who wrote that date on Exhibit 3?

19 A Mr. Hovan.

20 Q And so you were providing him the date so
21 that he could write that there?

22 A Correct.

23 Q And then there's a sound. And is that sound
24 -- you said was Mr. Hovan signing this form?

25 A Yes.

1 Q And at this point in time, what was his
2 demeanor like?

3 A The demeanor never changed. Still
4 articulate, lucid and wanted to cooperate.

5 Q And had he had an opportunity to read this
6 form?

7 A Yes.

8 Q Now I want to play for you one more clip.
9 And this is near the end of the transcript.

10 MR. MURRAY: So turning to page 34.
11 This is line 34 on page 34, Your Honor. And this is
12 1-12.

13 Can you play it, please?

14 (Begin playing audio clip G-1-12:)

15 "AGENT JACKSON: So then if there's
16 nothing else you can think of (indiscernible)?

17 "MR. HOVAN: That's pretty much it.
18 Like I am trying to tell the truth and tell you my
19 involvement and anything I can do to help you guys
20 with this investigation, I'll do.

21 "AGENT JACKSON: We appreciate that.

22 "MR. HOVAN: If you need me to be a --

23 "AGENT FEAR: We appreciate that.

24 "MR. HOVAN: -- witness or anything,
25 like, I'll do it."

1 BY MR. MURRAY:

2 Q So in this final section right before the
3 end of the transcript, what does Mr. Hovan offer?

4 A Again, he reiterates just like he did from
5 the beginning throughout the entire interview that
6 he's willing to cooperate, tell the truth and help in
7 any way he can with the investigation.

8 Q Okay. Now so, just in summary, about how
9 long did this interview last?

10 A A little less than an hour.

11 Q And how would you describe the atmosphere
12 throughout the entire interview?

13 A It was very laid back. It wasn't a
14 stressful environment. No aggression. No yelling.
15 No raised voices. Like I said, the room was
16 comfortable, well lit. Yeah. So I think it was just
17 a general conversation type environment.

18 Q And did Mr. Hovan's demeanor stay the same
19 throughout the entire interview?

20 A Yes.

21 Q Now did you ever threaten him throughout the
22 interview?

23 A No.

24 Q Make any promises?

25 A No.

1 Q Brandish any weapons or otherwise make a
2 show of force?

3 A No.

4 Q And he waived his Miranda rights, correct?

5 A Correct.

6 Q And was there any reason to doubt that was
7 a knowing and voluntary waiver?

8 A No.

9 Q And during this, he offered to show you his
10 WhatsApp messages and other messages. Is that right?

11 A Correct.

12 Q And that was unprompted at times, correct?

13 A Yes.

14 Q And that was repeated?

15 A Yes.

16 Q Now did you understand while he was doing
17 that that he was providing consent to review those on
18 his phones?

19 A Yes.

20 Q And did you memorialize his consent to
21 search his phones?

22 A Yes.

23 Q And during the entire interview before -- at
24 the time of his execution of the search warrant or
25 after, did you ever mention -- I said search warrant.

1 A Consent form

2 Q Let's start that again.

3 A The consent form.

4 Q During the entire interview before he signed
5 the consent form, while he did or after, did you ever
6 mention a search warrant?

7 A No.

8 Q And during the entire interview, did Mr.
9 Hovan ever attempt to withdraw the consent?

10 A No.

11 Q Or did he ever express concerns about the
12 consent that he'd given orally and in writing?

13 A No.

14 Q And did he ever give you any reason to think
15 that his consent was not knowing and voluntary?

16 A No.

17 MR. MURRAY: No further questions, Your
18 Honor.

19 THE COURT: Okay. Cross-examination.

20 MR. FAYHEE: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. FAYHEE:

23 Q And good afternoon, Special Agent Jackson.

24 My name's Ryan Fayhee. I'm representing Mr. Hovan.

25 Coming back to your role in the

1 investigation, you testified on direct examination
2 that you were not the lead case agent on this matter,
3 that you were helping out on the day of the arrest.

4 Is that correct?

5 A Correct.

6 Q Now are you on the same squad as the lead
7 case agent or a different squad at this time, February
8 of 2020?

9 A I'm on the same squad as one of the case
10 agents.

11 Q The same squad. And did you have a general
12 familiarity with the investigation?

13 A No.

14 Q Okay. And in your role as a special agent
15 on the squad, is it a white collar squad or how would
16 you describe the squad?

17 A White collar.

18 Q White collar. Okay. And I'm interested in
19 your preparation for the day of the arrest. If you
20 can remember -- if you can remember, when did you
21 first learn that you would be participating in the
22 arrest? I don't need a specific day but was it a few
23 days? A few months?

24 A I'll say maybe a day or two prior to.

25 Q Okay. And what steps did you take to

1 prepare for the day of the arrest? And I don't mean
2 sort of physically prepare or those sorts of things.
3 I mean more to get background on the case, to prepare
4 for the interview.

5 A Basically, just a -- like I said before, we
6 had a packet which was just pretty much like a bio and
7 just questions to ask if the -- if Mr. Hovan didn't
8 want to actually speak in the interview.

9 Q Okay. And who gave you that packet?

10 A One of the case agents.

11 Q Okay. Was it the lead case agent? Do you
12 remember which agent gave it to you?

13 A I don't recall.

14 Q Okay. And what was contained within this
15 packet?

16 A Best -- from my recollection, I remember it
17 was just a lot of names of, I guess, people who were
18 actually involved in the case itself.

19 Q Okay. And this document or the names, that
20 was for the purposes of preparing for an interview?

21 A Yes.

22 Q Okay. And was there any other detail in
23 this briefing packet?

24 A Not to my recollection. I can't -- I just
25 know -- not specifically remember the names.

1 Q And was there, for example, the affidavit
2 that had been used to support the execution of a
3 search warrant?

4 A I don't recall if that was in the packet.

5 Q Or an affidavit used to support the criminal
6 complaint that had been issued in the case.

7 A That was in the packet?

8 Q Yes.

9 A I don't recall.

10 Q Okay. Do you recall reading the affidavit
11 that was used in support of the search warrant?

12 A I don't recall reading the affidavit. I
13 remember seeing the search warrant.

14 Q Okay. Just the face sheet of the search
15 warrant?

16 A Yes, sir.

17 Q Okay. And were there any materials other
18 than the names and the background for the purposes of
19 the interview within the briefing packet in terms of
20 the strategy to use in the course of the interview?

21 A No.

22 Q Any documents that set out the goals of the
23 interview?

24 A No.

25 Q Okay. Did you receive an oral briefing from

1 any of your fellow case agents before the -- you know,
2 attempting the interview?

3 A We received a briefing as we would do for
4 general practice before effecting the arrest on safety
5 procedures as far as who possibly would be in the
6 room, things of that nature.

7 Q And that's the -- is that the morning of the
8 arrest before -- or at least at some point prior to
9 the arrest but on the same day?

10 A It was prior to the arrest, yes.

11 Q Yeah. It's more of a safety security
12 briefing than --

13 A Yes.

14 Q -- than what to achieve in the course of the
15 interview.

16 A Yes.

17 Q Okay. And on that day, you were assigned,
18 as I understand it from your direct testimony, was to
19 effectuate the arrest of Mr. Hovan, specifically.

20 A Correct.

21 Q So your goal was to come in, secure him
22 alongside Special Agent Fear, you know, place him
23 under handcuffs. The typical routine. Is that
24 correct?

25 A Correct.

1 Q Okay. Now before you approached the arrest
2 the day of, you testified on direct that it occurred
3 inside of a conference room at the Hotel Monaco which
4 I understand is just down the street, correct?

5 A I said it occurred at the Hotel Monaco, yes.

6 Q And my understanding is it's in a -- was in
7 a conference room of the Hotel Monaco. Is that
8 correct?

9 A Correct.

10 Q All right. And you remember what other
11 persons were being arrested that day besides Mr.
12 Hovan?

13 A Not by name. I just know there were several
14 individuals.

15 Q Okay. Do you remember how many -- just even
16 the number of individuals?

17 A Maybe two to four, somewhere's around there.

18 Q Okay. Less than -- less than four.

19 A Yeah.

20 Q And do you remember how many other persons
21 were in the room at the time. This is prior to you
22 coming in to have the arrest.

23 A How many people were in the room together
24 altogether?

25 Q Besides the four that we've referenced that

1 were placed under arrest.

2 A I don't know an exact number, no.

3 Q Okay. Can you give me even a rough estimate
4 at all. Was there one person?

5 A No. Probably like maybe seven, eight all
6 together.

7 Q Okay. So more than five at least that were
8 there. Okay. And were any of those persons placed
9 under arrest?

10 A Some of them, yes.

11 Q So sorry. Let me -- to make clear on the
12 record. So other than the four that were arrested on
13 that day, inclusive of Mr. Hovan, how many additional
14 people were in the room?

15 A Like I say, it could be anywhere's up to
16 eight.

17 Q Okay. So in total, there may have been, to
18 your best recollection, 13 people?

19 A I don't know about 13. Maybe 8 -- 8 or 9 at
20 best.

21 Q But collectively. I'm just trying to make
22 sure I understand in addition to -- so four persons
23 placed under arrest and potentially, is it your
24 testimony that there are four or five others?

25 A Yes.

1 Q Okay. Understood. And those four or five
2 others, were those all FBI agents that were in the
3 room?

4 A I don't know if they were all FBI agents.
5 I'm not sure.

6 Q Okay. So no FBI agents were arrested that
7 day, I take it.

8 A As far as FBI agents being arrested?

9 Q Yes.

10 A I believe everyone in there probably was in
11 cuffs at some point.

12 Q Every single person in the room was in
13 handcuffs at the end?

14 A I would assume. Like I said, I came in, got
15 Mr. Hovan and then we escorted him out. I didn't stay
16 the whole time.

17 Q Let me approach the question in a slightly
18 different way.

19 Do you recall the safety briefing even
20 loosely that morning?

21 A Yes.

22 Q And do you know where the persons to be
23 arrested were placed in that conference room? In
24 other words, were their backs to the door of the
25 conference room through which you would enter, for the

1 purposes of having an element of surprise and for your
2 own safety? Is that correct? Do you recall?

3 A Can you repeat that? Where they were
4 actually sitting?

5 Q Sure. It was a little garbled there. My
6 apologies.

7 So when preparing for the execution of the
8 arrest and getting that brief in the morning, did you
9 learn at that time that the defendants to be arrested,
10 the four that would be arrested, would have their
11 backs placed to the door that you would enter from?

12 A I don't recall.

13 Q You don't recall that?

14 A No.

15 Q Okay. Okay. Do you remember the conference
16 room where the arrests took place? Do you recall
17 whether there was a conference room table --

18 A Yes.

19 Q -- that persons would be seated at?

20 A Yes.

21 Q Okay. And do you remember -- once again, I
22 think you just testified but just to confirm. There
23 were four persons placed under arrest. Yes?

24 A Roughly, I would say, yes.

25 Q Okay. And the remaining persons in the room

1 -- in other words, the persons who were not subject to
2 arrest. Were all of the remainder FBI agents?

3 A Were the remainder FBI agents?

4 Q That's my question.

5 A I believe they were. Like I said, I didn't
6 know everyone in the room.

7 Q Okay. Okay. So you didn't recognize the
8 other people or some of them?

9 A Some of them but not all of them, no.

10 Q Okay. Okay. And that didn't come up in the
11 course of the briefing who would be in the room? In
12 other words, which were the defendants and which were
13 the other FBI agents?

14 A I was familiar with who -- the FBI agents I
15 knew by face. But as far as the defendants, I didn't
16 know -- like I said, my focus was Mr. Hovan. And I
17 just had his bio. I didn't know who else was going to
18 be affected.

19 Q Okay. Now on direct examination when you
20 were going through the interview, Mr. Hovan, my
21 client, made a few statements regarding this person
22 Hal. Do you recall that on direct examination?

23 A Yes.

24 Q And do you recall whether that person, Hal,
25 was in the room at the time of the arrest?

1 A I don't recall. Like I said, I didn't know
2 the names of all the people. I didn't know the -- I
3 didn't know the names. I didn't know where they were
4 going to be sitting in the room. Like I said, my
5 total tactic was to get Mr. Hovan and get him out and
6 secure him safely.

7 Q Okay. Did you ever perform an arrest -- I
8 heard you had 20 or so arrests since 2016. Have you
9 ever performed one in the presence of a confidential
10 human source?

11 A I believe so. I can't think off the top of
12 my head but I think I have.

13 Q Okay. And -- now at the time that you
14 entered the room, do you remember actually entering
15 the room where you got, I assume behind the scenes, a
16 go ahead, that it was time to go through the door?

17 A Yes.

18 Q Okay. Do you remember whether you knocked
19 on the door or an agent in front of you knocked on the
20 door or was it just swung open and you came in?

21 A I don't recall if there was a knock or not.
22 I'm not sure.

23 Q Okay. No one kicked the door down. It was
24 open.

25 A No. No one kicked it, no.

1 Q And do you remember -- I know there's four
2 persons being under arrest -- placed under arrest.
3 And it sounds like there's two agents per person. And
4 so my question is, do you recall how many total agents
5 were part of the arrest team?

6 A No. I don't recall the total amount.

7 Q Okay. Do you recall whether there were more
8 than the eight agents, two per defendant, present?

9 A That were effecting the arrest?

10 Q Exactly.

11 A I don't really know the exact amount, sir.

12 Q Okay. Do you remember whether or not any of
13 the agents that were effecting or participating in the
14 arrest had their guns, their firearms, drawn?

15 A I don't recall anyone's firearms being
16 drawn.

17 Q Okay. Do you recall whether your firearm
18 was drawn?

19 A No.

20 Q No. But you were armed.

21 A Yes.

22 Q Per FBI policy.

23 A Correct.

24 Q Yeah. Okay. But you don't recall, your
25 testimony today, best of your recollection, whether

1 anyone else had their guns drawn.

2 A I don't recall anyone else's gun being
3 drawn. I know mine was not.

4 Q Okay. And do you recall in the course of
5 the briefing that morning, the written briefing or the
6 oral recitation of the briefing, any indication or
7 direction that an agent should enter with his or her
8 firearm drawn?

9 A That they should enter with it?

10 Q Correct.

11 A Not to my recollection.

12 Q Okay. When you were through with this
13 briefing paper, do you recall what you did with it?

14 A With the briefing paper.

15 Q Yeah. The briefing paperwork you spoke
16 about that had the names on it and --

17 A Oh. As far as for the interview?

18 Q Yeah.

19 A What I did with it as far as -- like --

20 Q What did you with it --

21 A -- was it present with me when I was --

22 Q What did you with it following the
23 interview?

24 A It's probably in my desk maybe.

25 Q Okay. You didn't make it part of the case

1 file?

2 A No. I did not put it with the case file.

3 Q Okay. And you haven't submitted it for
4 discovery review?

5 A I have not, no.

6 Q Okay. Now at the time of the arrest --
7 again, we're still in the prep mode here. I know it's
8 a short period of time. But prior to effectuating the
9 arrest, did you conduct or review Mr. Hovan's criminal
10 history?

11 A I might have looked at his criminal history
12 prior to.

13 Q And what did you understand his criminal
14 history to be?

15 A From my recollection, I don't think he had
16 much of a criminal history.

17 Q He didn't have much of a criminal history or
18 --

19 A I can't speak to it. I know I looked at it.
20 I don't recall him having any like violent past or
21 anything like that.

22 Q Okay. But you don't recall he has no
23 criminal history at all.

24 A I don't recall exactly. I just remember
25 looking at it, yes.

1 Q Okay. Okay. Or that he had ever been
2 arrested at any time prior to February 10th of 2020.

3 A Correct.

4 Q Okay. Have you had an understanding of
5 where he was presently employed at the time of the
6 arrest?

7 A I don't know if I knew it prior to. I mean,
8 it came up in the interview where he was working at.

9 Q Okay. But you're not sure whether you had
10 learned that he worked at AT&T in the help care
11 division prior to the arrest.

12 A I don't recall if I knew that before going
13 into it.

14 Q Or his educational background for that
15 matter?

16 A Not that I recall.

17 Q Okay. And had you had an understanding that
18 this case, this investigation, that it involved the
19 use of undercover FBI resources -- I don't need all
20 the specific details, but that it was generally an FBI
21 undercover operation?

22 A Yes.

23 Q You had an awareness of that.

24 A Uh-huh.

25 Q Okay. All right. Now with respect to the

1 two persons who were in the room with you, Special
2 Agent Fear and Ms. Weber, an analyst, did both of
3 those agents support the investiga -- excuse me --
4 Special Agent Fear and Analyst Ms. Weber, were they
5 assigned to the investigation or, like you, were they
6 just helping out the day of?

7 A I believe they were just helping the day of.

8 Q Okay. So although I can ask them my own
9 questions and you're probably not aware of their
10 background, but from your perspective, they were not
11 assigned. They were not deeply steeped in the facts.

12 A No. I don't believe so.

13 Q Okay. And why did you have an analyst with
14 you there today (sic) rather than just two case
15 agents?

16 A I think we had her there for just the
17 purpose of taking notes.

18 Q Okay. She was supposed to take notes.
19 Okay. And with respect to Special Agent Fear, prior
20 to the arrest and interview, at any point, did you
21 speak with her about what the investigative strategy
22 would be in the course of the interview?

23 A I believe so, yes.

24 Q Okay. And what did you discuss?

25 A Just the particulars as far as transport,

1 who's driving, you know, what room are we going to get
2 him in. Specifics like that.

3 Q So sound like logistical things.

4 A Yeah.

5 Q Okay. So other than the logistical matters
6 that you were discussing, was there any discussions
7 around the actual interview strategy? In other words,
8 what you were going to seek to accomplish in the
9 course of the interview that took place?

10 A No. I think the only thing was I would
11 probably take the lead on questioning and then just go
12 down the list of names and see if anything rings a
13 bell and if Mr. Hovan was willing to -- if he was
14 willing to speak to us, just have him explain the
15 whole situation.

16 Q Okay. And was there any alignment at any
17 time between the way that you two would be conducting
18 this interview and the way that other agents who were
19 conducting interviews of other defendants, was there
20 any alignment on the strategies between your interview
21 and other interviews being held simultaneously?

22 A No. We just spoke on our interview
23 particularly.

24 Q Okay. And was there ever any instruction at
25 all -- let's start with a written instruction, in

1 fact. Was there anything, a written instruction to
2 inform or update Mr. Hovan on an interview that was
3 taking place elsewhere with respect to Mr. Fuchs?

4 A Was there any written instruction to inform
5 him of other interviews?

6 Q For example -- let me offer an example. Was
7 there an instruction written to you to suggest, if Mr.
8 Hovan wasn't speaking in the course of the interview,
9 to inform him that Mr. Fuchs, in fact, was?

10 A Not to my knowledge, no.

11 Q Okay. That's not something you recall from
12 the course of the interview?

13 A No.

14 Q Nothing that was written on paper in front
15 of you?

16 A Nothing I recall, no.

17 Q Okay. Okay. Now with respect to the
18 arrest, I think it was covered very, very well on
19 direct examination so I'll move through it fairly
20 quickly here. But at the time Mr. Hovan was placed
21 under arrest in that room at the Hotel Monaco, he was
22 placed in handcuffs at that time?

23 A Correct.

24 Q Okay. I heard a mention earlier of leg
25 irons. But there were no leg irons placed on him at

1 the Hotel Monaco?

2 A No. I don't believe we placed them on him
3 at the Hotel Monaco, no.

4 Q Okay. So just handcuffed with his hands
5 behind his back.

6 A Correct.

7 Q The usual routine.

8 A Correct.

9 Q Okay. And then from there, he was taken
10 outside the back of the Hotel Monaco --

11 A Yes.

12 Q -- and placed into a transport car?

13 A Correct.

14 Q And that was with you and Special Agent
15 Fear.

16 A Correct.

17 Q Okay. And then driven a short distance to
18 the FBI building?

19 A Yes.

20 Q Okay. And that's very nearby as I
21 understand it.

22 A Yes.

23 Q Okay. Probably longer to drive in traffic
24 than it would be to walk.

25 A Probably yes. Correct, yeah.

1 Q And he's then taken into the FBI building.
2 Do you recall what entrance you used? I assume it's
3 not through the front door like a member of the public
4 would come.

5 A No. We took him in the back and up the
6 elevator.

7 Q Okay. Is it an alleyway or can you describe
8 it for me?

9 A It's an alleyway that has like a delivery
10 port in the back of the building.

11 Q Oh. So sort of to receive materials --

12 A Correct.

13 Q -- that you use in the course of your work.
14 Big trucks can back up to it.

15 A Correct.

16 Q All right. And it's typical, I presume, to
17 bring persons who have been placed under arrest for
18 processing through that same entrance.

19 A Yes.

20 Q But it's not as if there's a sign that says,
21 you know, FBI. It's nondescript, if that's a fair way
22 --

23 A Yeah. That's --

24 Q -- to characterize it.

25 A Yeah. There's nothing. No insignia saying

1 FBI, no.

2 Q Okay. Okay. Now at this point, you hadn't
3 asked Mr. Hovan any questions.

4 A No.

5 Q And you hadn't yet advised him of any of his
6 rights, so-called Miranda rights.

7 A No.

8 Q Okay. And then at that point, you bring him
9 inside and you utilize an elevator to go to a higher
10 floor?

11 A Yes.

12 Q Okay. And then at that point, you find a
13 pre-arranged room for the purposes of the interview.

14 A Correct.

15 Q Okay. Now to your best recollection, at
16 that point, Mr. Hovan is still handcuffed?

17 A Correct.

18 Q Okay. Now you made this mention of leg
19 irons. I understand there's a table in the room. Do
20 you remember what that table looks like?

21 A It's just a basic circular table.

22 Q Okay. So is it a metal table?

23 A Wooden, I think.

24 Q Is it -- is the table metal -- oh, sorry.

25 A I said wooden --

1 Q Oh. Excuse me.

2 A I believe, yeah.

3 Q I didn't hear. A wooden table, okay. And
4 at this point, as Mr. Hovan sits down at the table, is
5 he still in -- does he still have handcuffs on his
6 hands?

7 A As he sits down?

8 Q Yes.

9 A I don't recall if he had them when he sat
10 down or not. I believe before I took them off when he
11 sat down to put his leg irons on.

12 Q Okay. So if I could take just one step
13 back. Now at the time of his arrest in the conference
14 room, he's placed in handcuffs. Now at any point, do
15 you perform a search of his body to determine whether
16 he has things in his pockets or otherwise?

17 A Yeah. I believe we performed a quick search
18 of him, yes.

19 Q Sort of a pat down search if I can
20 characterize it that way.

21 A I believe so, yes.

22 Q Okay. And did you remove items from him at
23 that time?

24 A I believe he had two cell phones on his
25 person and he had a bag, I think, that was in the

1 room, if I'm not mistaken.

2 Q Okay. A backpack or something of the sort.

3 A Uh-huh.

4 Q Okay. Now did you -- do you recall whether
5 you removed those items while still in the hotel area
6 in the conference room or was that upon exiting the
7 building?

8 A I believe we would have removed them prior
9 to -- prior to leaving the building.

10 Q Okay. So in the area of the hotel inside
11 the building.

12 A Yes.

13 Q Okay. And do you recall whether you secured
14 those or one of your colleagues would have secured
15 them, the phones?

16 A I don't recall.

17 Q Okay. Okay. Do you recall whether they
18 were placed in an evidence bag or how they were
19 maintained during the course of the transport?

20 A More likely, they were placed in a bag and
21 taken with us.

22 Q Excuse me?

23 A More likely, they were probably placed into
24 a bag or some sort and taken with us.

25 Q Okay. Okay. So at that point, was Mr.

1 Hovan -- so prior to entering the FBI building
2 subjected to a fuller search of his person, of his
3 body, just for the purposes of understanding whether
4 he has things in his pockets?

5 A More than likely, I believe so before I did
6 more -- once we got to a secure area in the FBI space,
7 we would have done more of a full search of him, yes.

8 Q And this is prior to attaching the leg irons
9 to his legs.

10 A More than likely.

11 Q Okay. You wouldn't put the leg irons on
12 first and then search him to determine.

13 A It depends.

14 Q Okay.

15 A Yeah.

16 Q And in your experience and training, is it
17 the protocol at the FBI, at least at the field office
18 here in Philadelphia, to always secure people with leg
19 irons to the table or are there some exceptions to
20 that rule?

21 A It all depends on the circumstances where
22 you're interviewing them.

23 Q Okay. Was there a particular set of
24 circumstances here that justified the use of those leg
25 irons?

1 A Officer safety.

2 Q Okay. And was there something that alerted
3 Mr. Hovan, who had never been arrested, who was highly
4 educated, worked at AT&T, that presented some unusual
5 safety risk?

6 A I wasn't going to take that chance
7 nevertheless.

8 Q Okay. And so, in your experience, the -- I
9 don't know -- 20 or so arrests that you've done and
10 around the same number of interviews, have any
11 defendants that you've ever been in the room with ever
12 not had on those leg irons?

13 A Anyone that I've ever interviewed is either
14 going to have handcuff on or a leg iron on, yes.

15 Q Okay. In every one of the interviews you
16 conduct.

17 A Yes.

18 Q Okay. Okay. But that's not FBI protocol,
19 to your knowledge, to have those leg irons on.

20 A I can't speak to their protocol but I know
21 we're supposed to have them secured when they're in
22 custody, yes.

23 Q Okay. All right.

24 MR. FAYHEE: Now I hopefully skipping
25 over a few questions here to move things along. So if

1 you give me just one minute --

2 THE COURT: How long do you think

3 you'll be --

4 MR. FAYHEE: Your Honor, if you'd like

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5 to take a break --
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6 THE COURT: No. I just --

7 MR. FAYHEE: A significant amount of

8 additional questions in light of the time the

9 government used to work through the full interview.

10 THE COURT: Oh, I'm not -- I'm not
11 equating it. I just wonder how much longer you -- 20

12 minutes? A half hour? An hour?

13 MR. FAYHEE: Oh. I'd say probably at

14 least an hour, Your Honor.

15 THE COURT: Oh, really? Okay. I'll

16 let you certainly go to 1 o'clock.

17 MR. FAYHEE: Okay.

18 THE COURT: Yeah. Okay.

19 MR. FAYHEE: Thank you, Your Honor.

20 THE COURT: If somebody has to leave --

21 you know, it's like kindergarten. Just raise your
22 hand. Okay?

23 MR. MURRAY: Thank you.

24 MR. FAYHEE: All right.

25 THE COURT: I think maybe I'll take a

1 break. I changed my mind. Okay.

2 All right. Why don't we get back --
3 why don't we come back at -- we'll just take a short
4 one, say, about 20 minutes.

5 MR. FAYHEE: Okay. That'd be fine.

6 THE COURT: Okay.

7 MR. FAYHEE: Thank you, Your Honor.

8 MR. MURRAY: Thank you, Your Honor.

9 THE COURT: All right. Court is in
10 recess. You're excused.

11 (Recess from 12:39 p.m. until 1:07 p.m.)

12 THE COURT: I don't know if that's good
13 or bad. Okay. All right.

14 Mr. Fayhee?

15 MR. FAYHEE: Thank you, Your Honor.

16 THE COURT: You're still under oath,
17 Agent. Okay.

18 CROSS-EXAMINATION (RESUMED)

19 BY MR. FAYHEE:

20 Q Special Agent Jackson, I'm going to refer
21 you to the -- as we move through these questions, to
22 the binder that is still in front of you. And I'll
23 refer to the same exhibits that have already been
24 placed into the record.

25 I want to direct your attention first to the

1 --

2 THE COURT: Well, one second. Before
3 you --

4 MR. FAYHEE: Yes, Your Honor.

5 THE COURT: -- continue, I do have to
6 reveal to you that Jennifer Williams is a former law
7 clerk of mine, for better or for worse, Jennifer. But
8 you already know that.

9 MR. FAYHEE: I've known Ms. Williams
10 for about 10 years, in fact. And so --

11 THE COURT: Oh, really?

12 MR. FAYHEE: -- I think very highly of
13 her. So no problem at all. You had a good law clerk.

14 THE COURT: You knew her? You knew
15 her.

16 MR. FAYHEE: Yeah.

17 THE COURT: Oh, okay.

18 MR. FAYHEE: We once worked together
19 before I went for private practice.

20 THE COURT: Till you traded sides.

21 MR. FAYHEE: That's right. That's
22 right.

23 THE COURT: Oh, okay. All right.

24 MR. FAYHEE: Thank you, Your Honor.

25 BY MR. FAYHEE:

1 Q So, Special Agent Jackson, I want you to
2 refer to the beginning of what's been marked as
3 Exhibit 1B which is the transcript of the interview.
4 And in particular, you'll note and you testified on
5 direct that at the beginning of the interview, you had
6 presented Mr. Hovan with his Miranda warnings. Do you
7 recall that testimony?

8 A Correct.

9 Q Now I'd like to draw your attention -- I'm
10 not going to play the audio so I just would like to
11 make use of the transcript if it makes things move
12 along a bit faster. So I'd like to direct your
13 attention down to line 29. And this is, as you had
14 testified before, you're in the effort of advising Mr.
15 Hovan of his rights and you have a --

16 THE COURT: What page are you on?

17 MR. FAYHEE: Your Honor, excuse me.

18 I'm on page 2 --

19 THE COURT: Oh, okay.

20 MR. FAYHEE: -- of the transcript. And
21 that's line, once again, 29.

22 THE COURT: All right.

23 BY MR. FAYHEE:

24 Q So in this effort and as was depicted on the
25 audio, you state the time, 12:20. And then you say,

1 "All right. All right. Let me scoop here and read
2 these to you. Okay. So this your advice of rights
3 form." Have I got that right?

4 A Yes.

5 Q Okay. And so what appears to be happening
6 based on what you're saying at the time is you're
7 moving your location to be next to Mr. Hovan to place
8 this Miranda form in front of him. Is that correct?

9 A Correct.

10 Q Okay. Now if you flip to what's been
11 marked, I believe, as Government Exhibit 2, you have a
12 copy of that Miranda form in front of you, correct?

13 A Correct.

14 Q Okay. Now -- I can tell because you've only
15 been an agent since 2016 that you didn't write this
16 form. I see it's been revised there in 2002.
17 Correct?

18 A Yes.

19 Q You see it in the corner, in the upper left-
20 hand corner? And so this is a document that is very
21 much standard FBI protocol, right?

22 A Correct.

23 Q Yeah. And so, at this time as depicted
24 here, you sit next to him and take care to recite
25 verbatim as you're required to do by FBI policy each

1 of these warnings. Is that correct?

2 A Yes. I recited each one, yes.

3 Q And at that time, Mr. Hovan is reading along
4 with you -- to the best of your knowledge anyway he's
5 reading along to each of these warnings, correct?

6 A Correct.

7 Q And these initials here, did you witness
8 personally Mr. Hovan draw his initials at that time --

9 A Yes.

10 Q -- acknowledging that he fully understood
11 his rights?

12 A Yes.

13 Q And for each one of these, you read out
14 loud. And then you gave him the opportunity to sign
15 it, correct?

16 A Correct.

17 Q And then you signed it yourself --

18 A Yes.

19 Q -- which was not acknowledgment that you
20 had, in fact, complied with the FBI protocol to walk
21 through with each of these warnings verbatim.
22 Correct?

23 A I was just signing as a witness to say that
24 I viewed him sign himself, yes.

25 Q And you administered the warnings.

1 A Correct.

2 Q Very well. And you were sitting just
3 alongside him. And then presumably, after you were
4 done and he signed, you moved back to across the table
5 from him.

6 A Correct.

7 Q Okay. And for the rest of the interview,
8 you had effectively sat across and performed the
9 interview across the table.

10 A Yes.

11 Q Yeah. Okay. All right. Now moving on with
12 the interview, I'm going to be referring now to the
13 transcript of the interview. And in particular, I'd
14 like to draw your attention to page 21. And I'll give
15 you a moment to get there. And in particular, I'm
16 going to come down to around line 40 of page 21.

17 A Okay.

18 Q Now just to reference back that that Miranda
19 warning you just gave -- now if I understand the way
20 things go, standard FBI protocol is first you give the
21 Miranda warnings verbatim, you get the initials, you
22 have him sign it, and then you start asking questions,
23 right?

24 A Yes.

25 Q And in fact, you're not allowed, under FBI

1 protocol, to begin asking questions until -- in a
2 custodial setting until you advise him of those
3 rights, each and every one of them verbatim.

4 A Yeah. Nothing sub -- no. We're not
5 going -- we're not talking about anything case
6 specific, no.

7 Q Yeah, exactly. Right. And because if you
8 do, there's a risk you can't use the statement later
9 as is advised in the Miranda warnings.

10 A Correct.

11 Q Yeah. Okay. So now we're at 21 -- page 21,
12 line 40. And up to this point, to the best of your
13 knowledge, Mr. Hovan has been cooperative?

14 A Yes.

15 Q Correct? He's waived his rights formally
16 after they've been read to him by you. Correct?

17 A Correct.

18 Q All right. Now up to this point -- now here
19 he starts saying things and, around line 42, he says,
20 "And like I said, like, having at -- looking at
21 WhatsApps conversations and things like that, they're
22 fair game to you." And then he says this, "I mean,
23 you're going to look at them anyway probably but I'll
24 point you to the ones. I'll point you to every single
25 conversation I ever had."

1 Now we just played that earlier. Any reason
2 to dispute that statement that Mr. Hovan just made?

3 A No.

4 MR. MURRAY: Your Honor, I just want to
5 object. I think that Mr. Fayhee misread it in line --
6 and it's relevant. I don't want to -- where it's on
7 line 42, he said "having at -- looking at". It states
8 "have at -- looking at" which I think is a relevant
9 portion of the transcript. But other than that, I
10 think it was read correctly.

11 MR. FAYHEE: Mr. Murray is absolutely
12 correct. I may have misread it. I'm not sure exactly
13 what it says anyway but Mr. Hovan may have been a
14 little inarticulate at the moment. But point well
15 taken. Just to be clear.

16 BY MR. FAYHEE:

17 Q "Having" -- excuse me -- "have at looking at
18 WhatsApp conversations and things like that because I
19 -- they're fair game for you. I mean, you're going to
20 look at them anyway probably but I'll point you to the
21 ones. I'll point you to every single conversation I
22 ever had."

23 MR. FAYHEE: Hopefully I did a better
24 job that time. Good? All right.

25 BY MR. FAYHEE:

1 Q Now your response to that question is

2 "Right." You see that?

3 A Yes.

4 Q All right. Now at this point, Mr. Hovan
5 does not have a consent form in front of him, the one
6 that we'll talk about. It's been entered into
7 evidence already. But he doesn't have that in front
8 of him.

9 A No.

10 Q Correct? And you do not at that time inform
11 him, in fact, that in order to look at them, you
12 either have to give consent or go to a court to get a
13 court-authorized search warrant. Correct?

14 A I did not inform him, no.

15 Q Correct. Okay. And Special Agent Fear
16 didn't at that time.

17 A Not at this point, no.

18 Q All right. And --

19 A Shortly after.

20 Q And you did nothing to correct his
21 misimpression. That is, that your -- I mean, "You're
22 going to look at them anyway probably".

23 A You said I did nothing to correct his --

24 Q Yeah. You didn't take any steps to correct
25 that misimpression. You just said "Right", correct?

1 A I mean, 'cause I didn't see it as a
2 misimpression 'cause we hadn't looked at anything. We
3 haven't asked to look at anything at that point.

4 Q Okay. All right. All right. And then
5 later, we're at line 14 of page 22. At that point,
6 Special Agent Fear says, "Yeah. Do your phones -- do
7 they have passcodes?" You see that?

8 A Yes.

9 Q Now do you, sitting here today -- we can ask
10 Special Agent Fear, of course, but I'm interested in
11 your impression, why she asked for the codes to the
12 iPhones.

13 A Because up to this point, he had been
14 volunteering information that we know would be in the
15 phones and we wouldn't be able to get access to them
16 if he's going to give us consent without passcodes.

17 Q Okay. So at this stage, he still doesn't
18 have the consent form. You've not shown him the
19 consent form when he makes this -- excuse me -- when
20 Special Agent Fear says "Do your phones have
21 passcodes?" Correct?

22 A I think at this point, I was looking to get
23 the consent form. I think I was looking through the
24 paperwork to find it.

25 Q Okay. So you were looking for a consent

1 form but it wasn't on the table. It wasn't in front
2 of Mr. Hovan. Correct?

3 A I don't -- I don't think so, not at this
4 right exact moment.

5 Q All right. Now in response to that, Mr.
6 Hovan identifies, at line 16, that his iPhone has a
7 passcode "but that's my work phone". He says "There's
8 nothing on there. I mean, you can look at it but
9 there's nothing on there." Correct?

10 A Correct.

11 Q All right. Now there's this back and forth
12 as you testified to and as we heard earlier on the
13 audio recording. And -- excuse me. I'm getting ahead
14 of myself here.

15 (Pause)

16 MR. FAYHEE: One moment, please.

17 BY MR. FAYHEE:

18 Q Now going to line 16, he says, "There's
19 nothing on there. You can look at it. There's
20 nothing on there." And in response, Special Agent
21 Fear says, "Okay. Yeah. I mean, we're going to look
22 at both phones regardless and it's usually just
23 easier." Okay. Now at this stage, when that
24 statement by a special agent of the FBI to Mr. Hovan,
25 who's been placed under arrest, says "I mean, we're

1 going to look at both phone regardless and it's
2 usually just easier", at that point, does Mr. Hovan
3 have a consent form in front of him? Do you recall?

4 A I don't recall if he had it in front of him.
5 I think at that point, I might have had it in hand but
6 I'm not sure.

7 Q But in your hand.

8 A Yeah. It was either in my hand or I was
9 placing it on the table. I don't know if I actually
10 had it in front of him or not.

11 Q In your hand across the table from him.

12 A Correct.

13 Q All right. Okay. And at that point, after
14 Special Agent Fear makes the statement "We're going to
15 look at both phones regardless. It's usually just
16 easier", at that point, did you say or correct any
17 misimpression that a warrant would be required or that
18 Mr. Hovan would consent?

19 MR. MURRAY: Objection. Assumes the
20 facts not in evidence.

21 THE COURT: What --

22 MR. MURRAY: That there was a
23 misimpression.

24 THE COURT: Well, he can -- rephrase
25 the question.

1 MR. FAYHEE: All right.

2 BY MR. FAYHEE:

3 Q After Special Agent Fear made the statement,
4 "We're going to look at both phones regardless", did
5 you make any statement in response to that immediately
6 after?

7 A No.

8 Q No. Okay. Did you place the consent form
9 in front of Mr. Hovan immediately after?

10 A After SA Fear's comment?

11 Q After Special Agent Fear made the statement
12 that she was going to look at the phones regardless.

13 A I don't remember if it was immediately after
14 but it was very soon after.

15 Q Okay.

16 A I don't know if it's right at that moment.

17 Q Well, we can go back to the transcript. In
18 fact, after it's determined that there's a passcode on
19 the iPhone and that there's no passcode on another
20 phone, you make the following statement: "Okay. So
21 what we're going to do is I'm going to have you -- if
22 you're good with this -- with us looking through your
23 phones, I'm going to have you sign a consent form."

24 That's at line 29. You see that?

25 A Yes.

1 Q Correct. Now at this point, Mr. Hovan still
2 doesn't have a consent form sitting in front of him,
3 does he?

4 A I don't believe so.

5 Q In fact, the consent form is sitting in
6 front of you across the table, correct?

7 A Possibly.

8 Q Possibly?

9 A Yeah. Either it's in my hand or sitting on
10 the table.

11 Q Well, you heard, during the direct
12 examination, Mr. Murray -- you heard him. He's got
13 very good ears. He heard the shuffling of the paper
14 across the table. But it wasn't at this point, was
15 it?

16 MR. MURRAY: Objection. I think that
17 mischaracterizes the evidence. That was discussion of
18 signing the paperwork but there wasn't shuffling the
19 paper across the --

20 THE COURT: Well, you can argue that.
21 I'm not going to -- I'll allow the question.

22 MR. FAYHEE: Well, if the agent's
23 having trouble remembering where on the table the form
24 is, maybe it will help clear it up in a minute --

25 BY MR. FAYHEE:

1 Q -- because at this point, you say -- and now
2 I'm on the next page --

3 THE COURT: What page --

4 MR. FAYHEE: Page 23. And I'm at line
5 3. Well, let me start at line 1.

6 BY MR. FAYHEE:

7 Q Mr. Hovan identifies his iPhoneX

8 A Yes.

9 Q Okay. And then you ask, "And does it have a
10 PIN associated with it?" Correct?

11 A Yes.

12 Q And Mr. Hovan responds with a series of
13 numbers and letters. Now the reason you're asking
14 that question, as I recall on direct examination, is
15 because you, with your hand and your pen, are filling
16 out the consent form to identify the iPhone. Isn't
17 that correct?

18 A Correct.

19 Q All right. And so the form is still in
20 front of you. You haven't -- in other words, as in
21 the case of the Miranda rights, come over and sat next
22 to Mr. Hovan. You're still across the table with the
23 form in front of you.

24 A Correct.

25 Q And it's facing -- it's facing you. You're

1 writing legibly directly in front of you.

2 A Correct.

3 Q All right. Okay.

4 A But where Mr. Hovan was in plain sight where
5 he could see me correct it.

6 Q He could see you correct what?

7 A As I was writing in the -- I was writing
8 uppercase. He corrected me in lowercase so he could
9 see the form that I was writing on.

10 Q Okay. But you didn't give him his Miranda
11 rights on that side of the table. You came -- sat
12 next to him, didn't you?

13 A For his --

14 Q Because you wanted him to see the form?

15 A For his Miranda rights?

16 Q Yes.

17 A Yes.

18 Q Yeah. But here, for this form, you stayed
19 seated on the other side of the table, correct?

20 A For him to sign it?

21 Q No, no. At this moment, at line 5, when you
22 are writing the passcode, you were sitting on the
23 other side of the table not next to Mr. Hovan.

24 A Correct.

25 Q Correct. All right. So then we go at line

1 11 and 13 and 14. At this point, you're clarifying
2 the actual passcode to ensure that you have it right
3 which you do ultimately at 17 where it says, "All
4 right. So 0510hova." Is that correct?

5 A Correct.

6 Q Still the form's in front of you on the
7 other side of the table. Correct?

8 A Correct.

9 Q And the phones are in your possession.
10 They're not as if they're in Mr. Hovan's possession at
11 this stage or do you recall? I know there's a back
12 and forth about trying to open it. So --

13 A I don't recall if he had them at this
14 particular time or not.

15 Q Okay. All right. Now leading up to this
16 point where you're having this back and forth, Mr.
17 Hovan has offered numerous times to demonstrate and to
18 show certain WhatsApp conversations or chats. Is that
19 correct?

20 A Correct.

21 Q Numerous times he offered to do that.

22 A Correct.

23 Q And did you interpret prior to handing him
24 that consent form -- I believe that conversation
25 starts all the way back on page 21 of the transcript.

1 Did you interpret his offer to show you WhatsApp
2 conversations to allow for a full and complete search
3 of his mobile device?

4 A Yes. When he said WhatsApp conversations
5 and things like that and everything leading up to that
6 where he was giving pretty much full -- like he said,
7 I'll cooperate in any way I can. I interpreted it as,
8 yes, he would be giving consent (indiscernible) for
9 everything.

10 Q So when he says "and things like that", you
11 meant you can look at the WhatsApp conversations --
12 when he says -- in fact, I believe he said, "I'll walk
13 you through the WhatsApp conversations and things like
14 that". You interpreted "things like that" to be a
15 full search of the phone.

16 A Yeah. Anything similar to it, whatever else
17 would be in the phone.

18 Q And those statements were made, once again,
19 before Mr. Hovan was presented with the consent form.

20 A Yes. And we hadn't looked at the phone
21 before we had signed a consent form either.

22 Q No. You just asked him questions about what
23 the passcodes were over the course of several pages of
24 transcript before putting the consent form in front of
25 him. Correct?

1 A Yes, because he kept giving us consent. So
2 we would need the passcodes, yes.

3 Q Right. Okay. Now we're on page 24.
4 There's continued back and forth about phones. At
5 line 30, you say, "All right. So this one has no
6 passcode and the iPhoneX -- can you get to it through
7 -- if you can't use your face, can you just put the
8 passcode in and it still will let you in the phone?"

9 At that point even, on page 24, does Mr.
10 Hovan have the consent form in front of him or is it
11 still in front of you?

12 A I don't recall. It might still be in front
13 of me but I think it was in plain view at that point.

14 Q Okay. And when you say it's in plain view,
15 you mean that Mr. Hovan is close enough where he can
16 read the document or that he can see a piece of paper
17 across the table in front of you?

18 A I don't recall. I know I was filling it
19 out. So I don't know if I was leaning and kind of
20 filling it on an angle where he could possibly still
21 read it.

22 Q Okay. All right. Now we're on page 25
23 where the conversation continues. For example, at
24 page -- at line 28, Special Agent Fear says, "I think
25 it might be off. Let's try it." You state

1 thereafter, at line 30, "Possibly not. I mean, I
2 don't know. It depends on what they find on there,
3 what they don't."

4 When you're making that statement, what are
5 you referring to? "It depends on what they find on
6 there, what they don't."

7 THE COURT: I don't see it.

8 A I think --

9 MR. FAYHEE: Excuse me. That's at line
10 -- it's at line 30, the second sentence.

11 THE COURT: Oh, line 30.

12 MR. FAYHEE: -- beginning "It depends".

13 THE COURT: Okay.

14 BY MR. FAYHEE:

15 Q Do you recall --

16 A Are we good?

17 Q I think we're in the same place.

18 A Okay.

19 Q Yeah. Do you recall what you meant by that
20 statement?

21 A I was referring to -- 'cause he inquired if
22 he would be getting that -- if he was not going to get
23 that phone back for a while. And just for any piece
24 of evidence, it depends on, as I said, anything found
25 on it that they need or if they don't need. So I

1 can't -- I didn't want to give him a time frame when
2 he could get it back or not.

3 Q It depends -- so your point, if I understand
4 it correctly. You correct me if I get it wrong. The
5 statement means it depends whether we, the FBI, who
6 are about to search your phone, determine if there's
7 anything on it. That will determine how long it is
8 before it's returned to you. Is that correct?

9 A Yes.

10 Q And do you know, sitting here today, whether
11 this phone has ever been returned to Mr. Hovan?

12 A I do not.

13 Q Okay. And once again, this at line 30, the
14 statement you just made, "It depends" -- starting "It
15 depends", still at this point, does Mr. Hovan have
16 that consent form in front of him?

17 A I don't think so. But again, we weren't
18 looking through the phone if he didn't sign it. So --

19 Q Yeah. But that wasn't my question. My
20 question wasn't what you intended to do.

21 A That was --

22 Q My question is what statement did you -- at
23 the time -- excuse me -- at the time you made the
24 statement, did Mr. Hovan have the consent form in
25 front of him.

1 A That's what I was saying. I don't think he
2 did.

3 Q Had he yet been offered the opportunity to
4 review the form?

5 A At that point, I don't recall.

6 Q Well, let me help you out. At the top of
7 page 26, at line 3, Mr. Hovan says, "So what are
8 the -- what are the next steps -- I guess -- are you
9 going to answer -- can I ask that or --" And then you
10 respond at line 6, "Yeah. Umm -- but let me -- let me
11 get through this real quick if, uh -- okay. So you
12 just put your --" You see where I am?

13 A Yes.

14 Q Now as I believe you testified on direct
15 examination, is it at that point, at line 6, where, in
16 fact, you hand the consent form over to him?

17 A I think at this point is when I physically
18 handed it over to him. That's when he was looking
19 through it and asking for the date to sign.

20 Q All right. And so between line 6 and line
21 16, where you testified you're offering and telling
22 him the date, the date of his arrest, "Yes. Yep.
23 February 10, '20. Thank you." That's the point at
24 which he's actually applying his signature. Is that
25 correct?

1 A If that coincides with the scratching that
2 was on the audio, yes.

3 Q Yep. And so the -- so -- now we started in
4 this cross-examination, I think we were on page 21 of
5 the transcript at the time in which Mr. Hovan said at
6 the bottom, at line 43, "I mean, you're going to look
7 at them anyway probably." That's where we started
8 this line of questioning. And then we got all the way
9 to page 26 at which point, at line -- you know,
10 between -- at some point between 6 and 16, he actually
11 has the form in front of him. Correct?

12 A To the point where he signed it, yes.
13 Correct.

14 Q Yeah. Now we can play it again if it would
15 be useful. But I happened to be counting when it was
16 played earlier today at the time period between around
17 page (sic) 6 and page 16 -- and you're welcome to
18 dispute it. I'll be rough but it was about 20
19 seconds, that time frame.

20 THE COURT: Not page. You meant line.

21 MR. MURRAY: Yeah.

22 MR. FAYHEE: I'm sorry.

23 BY MR. FAYHEE:

24 Q Once again, page 26, line 6, where he says
25 "Yes. Umm -- but let me -- let me get through this

1 real quick" and ending at the point at which where, at
2 16, "Yes. Yep. 2/10/20." Do you remember that?

3 Now we don't have to get down to the exact
4 seconds. I don't want to have a dispute or a debate
5 about it. But it's a very short period of time that
6 you just listened to on direct examination. And it
7 takes up 10 lines of the transcript. Is that fair
8 enough?

9 A As far as the consent form itself?

10 Q As far as the moment you placed the consent
11 form in front of him to the moment at which it's
12 signed.

13 A Fair enough.

14 Q Okay. We'll quibble over a second or two.
15 And now between that time period, 6 and 16, I don't
16 see or hear, and believe there's enough time even, for
17 you to verbally advise him of his right to refuse
18 consent. Is that correct?

19 A No. I didn't verbally because it's in
20 writing.

21 Q You didn't verbally because it was in
22 writing. But you didn't verbally. Correct? And you
23 know Mr. Hovan can read.

24 A Yes.

25 Q Yeah. If he's given enough time to read.

1 A Yes. I did not rush him through. I mean,
2 when I handed it to him, he had as much time in the
3 world if he wanted to look at it.

4 Q Right. Now I'd like to refer actually to
5 the consent form. I believe it was Exhibit 3 if you
6 can flip to that.

7 A Okay.

8 Q Okay? Now -- now once again, I'll ask
9 'cause I know the answer. You didn't create this
10 form. It's a standard FBI form.

11 A Correct.

12 Q Correct? All right.

13 A Yes.

14 Q Do you see the upper left-hand corner of
15 this form?

16 A Yes.

17 Q And when was it last revised?

18 A '94.

19 Q 1994?

20 A Yes.

21 Q Some 27 years ago?

22 A Yes.

23 Q Correct? Yep? All right. Now this form
24 that you're looking at here, it doesn't -- correct me
25 if I'm wrong but it doesn't have any initials on it in

1 comparison to, say, the Miranda form, correct?

2 A No.

3 Q Now is it FBI protocol for individuals who
4 are presented with this form to be asked to initial
5 it?

6 A I don't believe so.

7 Q Okay. And is it FBI protocol that they'll
8 be verbally informed -- that is, a witness be verbally
9 informed of the consent to search?

10 A I don't believe so.

11 Q Okay. Now -- all right. So -- now looking
12 at the form at Exhibit 3 --

13 MR. FAYHEE: I don't know if Your Honor
14 has one in front of you just to --

15 THE COURT: Yes.

16 MR. FAYHEE: -- double check -- okay.

17 BY MR. FAYHEE:

18 Q Now -- and, Special Agent Jackson, you have
19 one in front of you as well?

20 A Correct?

21 Q The -- okay. Now question number 1, you
22 testified on direct that this is your handwriting that
23 is identifying the iPhoneX and the password. Correct?

24 A Yes.

25 Q And then the Samsung phone as well.

1 A Yes.

2 Q Correct? Okay. Now here, I see number 2.

3 It says, "I have been advised of my right to refuse
4 consent." Do you see that?

5 A Yes.

6 Q And this is the one that the absence -- the
7 omission of any initial next to it indicating that Mr.
8 Hovan or anyone else has read it. Right? A blank
9 spot, correct?

10 A Yes.

11 Q Okay. Now I've scoured this transcript but
12 I think we covered, in those 10 or so lines, the
13 discussions around this document. And I didn't hear
14 anywhere in there you or anyone else advising Mr.
15 Hovan of his right to refuse consent. Have I missed
16 something?

17 A No, 'cause he -- he kept giving it
18 unprovoked. No. We didn't verbally advise him, if
19 that's what you're asking. No.

20 Q Well, he gave it unprovoked. I'm interested
21 in that term because when you say unprovoked -- now
22 this interview, again, happened after Mr. Hovan was
23 placed under arrest. Correct?

24 A Correct.

25 Q And he was taken into custody?

1 A Correct.

2 Q Yeah. And he was sitting in at least leg
3 irons, we can agree, at the FBI, correct?

4 A Correct.

5 Q Yeah. And two FBI agents are interviewing
6 him, one of which said "We're going to search your
7 phones regardless". You heard that in the transcript,
8 didn't you?

9 A Yes.

10 Q Prior to receiving a consent form -- so I'm
11 interested in what you mean by "unprovoked".

12 A When he kept voluntarily saying that he'd
13 help any way, shape or form, look through this, look
14 through that. Yeah.

15 Q And before he was shown this consent form,
16 correct?

17 A Correct.

18 Q Yeah. A consent form that says I have been
19 advised of my right to refuse consent. Now this
20 number 2 -- it says, "I've been advised of my right to
21 refuse consent". But where is the advice provided?
22 That's what I'm interested in. Do you know?

23 A We never verbally told him that, no.

24 Q No. I didn't think so. And then it says,
25 "I give this permission voluntarily." I suppose that

1 one speaks for itself, doesn't it?

2 A Correct.

3 Q And then it says, "I authorize these agents
4 to take any items which they determine to be related
5 to their investigation." Correct?

6 A Correct.

7 Q Right. Now I don't know if you recall
8 sitting here today whether you saw or witnessed Mr.
9 Hovan read each and every one of these points prior to
10 putting his signature on. But it would have had to
11 leave, if I understand correct within that same time
12 frame, the time to put the date on, put his signature,
13 and then put your signature on. Isn't that correct?

14 MR. MURRAY: Objection. They're ending
15 up with a question but there was a long statement in
16 the middle there.

17 MR. FAYHEE: Sometimes I can ask better
18 questions, Your Honor. Let me give it a shot.

19 THE COURT: Okay.

20 BY MR. FAYHEE:

21 Q The point I'm making is -- and you can refer
22 back to the transcript between 6 and 16. During that
23 time period -- now you had already filled out the work
24 at the top, correct? That is the iPhone
25 identification. I think we've established that,

1 correct?

2 A Correct.

3 Q So for the remainder of that 20 or so
4 seconds, Mr. Hovan would have had to read each of
5 these four points, clarify what date it was and then
6 sign this document. Isn't that correct?

7 A Correct.

8 Q Yeah. Okay. Good.

9 A Which I don't think it would take that long
10 to read this document. It's only four points.

11 Q Well --

12 A And going back -- advice of rights, he could
13 have terminated it at any time.

14 Q Sure. No, no, no. I heard that. I
15 appreciate -- I appreciate the additional question.
16 He understood those well because I know you took pains
17 at the beginning of the interview to sit next to him
18 and walk through every single one of those Miranda
19 rights and have him initial it and make sure he
20 understood it. Correct?

21 A Correct.

22 Q But you never asked him here whether he
23 understood the consent form, did you?

24 A No, 'cause once I read him his Miranda
25 rights, I knew that he could speak and read the

1 English language. So, I mean, he could take as much
2 time as he saw fit. If he had a question, we would
3 have been more than happy to ask him -- or answer for
4 him.

5 Q Yeah. If. But you never did disabuse in
6 leading up to the point where he had that form that he
7 had the right to refuse consent, did you? You never
8 said -- stated that, did you?

9 A No.

10 MR. MURRAY: Objection.

11 THE COURT: It was state -- asked
12 already.

13 MR. MURRAY: That there's no
14 question -- there's no evidence that he needed to be
15 disabused of --

16 THE COURT: Well, that's a matter of
17 law --

18 MR. MURRAY: But there --

19 THE COURT: -- whether I have -- that's
20 a matter of whether I ruled he had a -- he had to be
21 disabused. I haven't ruled on that yet. I mean, I
22 may decide that way that he --

23 MR. MURRAY: My point is there's no
24 evidence that he had a misimpression regarding that
25 right whether or not he could refuse consent or not.

1 There's no indication. There's a statement in the
2 transcript where he says that "You're probably going
3 to look at them anyways". But that doesn't go in any
4 way -- it's not clear that that goes to consent or not
5 or search or obtaining them from another witness or
6 obtaining --

7 THE COURT: That's --

8 MR. MURRAY: -- the --

9 THE COURT: That's a legal argument.
10 I'll accept that as a legal argument.

11 MR. MURRAY: Okay.

12 THE COURT: But I don't think it
13 impacts on the questioning.

14 MR. FAYHEE: Your Honor, I'll move
15 along in any event.

16 THE COURT: I think I understand what
17 you've done.

18 MR. FAYHEE: Okay. So -- now I have --
19 Your Honor, just briefly here. I have two documents
20 provided by the government. They're aware. We worked
21 out ahead of time. They're just not electronically in
22 your binder. We're going to submit them ourselves.
23 We couldn't get our computer to work on your screen
24 but we have them in paper copies. Is it okay? I'll -
25 -

1 THE COURT: It's fine. I don't care.

2 Just as long as --

3 MR. FAYHEE: I'll hand them up
4 individually.

5 THE COURT: Just as long as the
6 government has a copy, you can do that.

7 MR. FAYHEE: Yep. Yeah. I think they
8 do but I'll -- I will make doubly sure.

9 (Pause)

10 MR. FAYHEE: So, Your Honor, just
11 following the Government's exhibit numbering --

12 THE COURT: So this is Defense --
13 Defense exhibit --

14 MR. FAYHEE: This is Defense exhibit
15 and it's Exhibit Number 5. And I'll give the
16 Government, obviously, an opportunity to object while
17 I hand it up. If I may approach --

18 THE COURT: Sure.

19 MR. FAYHEE: -- one for the witness and
20 one for --

21 THE COURT: Do you have an extra one
22 for the law clerk? Well, she can use --

23 MR. FAYHEE: We have additional copies.
24 Do you have another one there?

25 THE COURT: I don't want them to

1 deprive the witness.

2 MR. MURRAY: I guess my question is,
3 are you refreshing his recollection with this or are
4 you offering it into evidence? What's the purpose
5 that this is being offered for?

6 MR. FAYHEE: Well, first of all, I'm
7 going to ask questions about this. The Agent has just
8 testified, I'd like to refer back to this 302 in the
9 course of his testimony. So if I could be given the
10 opportunity to ask him a couple of questions, I'll
11 work it in. I'm sure Mr. Murray --

12 THE COURT: I don't know what it is.

13 MR. MURRAY: I have no question to him
14 being asking questions about it, I'm just wondering if
15 it's being offered. I'm not sure if there's an
16 appropriate purpose to offer it into evidence.

17 THE COURT: Well, let him ask questions
18 first and then --

19 MR. FAYHEE: Yeah, I was just going to
20 hand it up --

21 THE COURT: Right.

22 MR. FAYHEE: -- for logistic purposes
23 to make it easy. I'm sorry about that.

24 THE COURT: Don't forget to -- I mean,
25 after -- they have not been admitted, this has not

1 been admitted.

2 MR. FAYHEE: Understood, understood,
3 Your Honor.

4 BY MR. FAYHEE:

5 Q But what I have handed up to you has been
6 marked as Exhibit 5 and my first question to you is,
7 is just whether you recognize this document.

8 A Yes.

9 Q Okay. And what is the document?

10 A This is a 302 of the synopsis of the
11 interview.

12 Q Okay. And when you say interview, you mean
13 the interview transcript?

14 A Correct.

15 Q Which is, of course, the transcript of an
16 audio recording of the interview?

17 A What?

18 MR. MURRAY: Objection. He said of the
19 interview, not of the transcript.

20 THE WITNESS: Right.

21 MR. FAYHEE: Excuse me. To be clear,
22 I'll just -- I'll restate it --

23 THE COURT: That's correct.

24 MR. FAYHEE: -- entirely.

25 THE COURT: Sustained.

1 BY MR. FAYHEE:

2 Q This document sitting before you, as you've
3 just said, is a synopsis of the interview, correct?

4 A Yes.

5 Q And the interview that we're referring to is
6 the same one we've been discussing as depicted in the
7 transcript, correct?

8 A Yes.

9 Q Okay. Mr. Hovan's interview?

10 A Correct.

11 Q Correct? Okay, good. Now, did you draft
12 this summary of the interview?

13 A I did not draft it, no, but I was on it as
14 far as an approver.

15 Q Okay. Who drafted the summary?

16 A SA Fear --

17 Q Okay.

18 A -- Special Agent Fear.

19 Q Your co-agent in the interview?

20 A Yes.

21 Q Yes, okay. And when you say you approved
22 it, what does that mean?

23 A Reviewed it. I reviewed it and was in
24 agreeance (sic) with her writing.

25 Q That is -- what do you mean, in agreement

1 with the writing?

2 A That everything -- that I agree with
3 everything that she wrote.

4 Q Okay. In other words, if I can characterize
5 it, you correct me if I'm wrong, but that it fairly
6 and accurately depicted the interview that you had sat
7 through?

8 A Yes.

9 Q And at the time that -- and you approved
10 this as a second agent, in other words, as a verifier,
11 is what you're saying, correct?

12 A Correct.

13 Q You're not Special Agent Fear's supervisor,
14 it's just a verification?

15 A Correct.

16 Q Correct? Okay. And when you approved this
17 document, had you listened again to the audio of the
18 interview?

19 A I don't recall.

20 Q Do you recall whether you reviewed a
21 transcript from the interview?

22 A At this point, I don't think we had a
23 transcript of it.

24 Q Okay. And so, you know, again, to the best
25 of your recollection, did you approve it simply based

1 on what you personally had witnessed in the course of
2 this interview?

3 A Yeah, from what I can recall, yes.

4 Q From what you could recall?

5 A Yeah.

6 Q Okay. And what is the date -- now, there's
7 two dates on this exhibit, right? There's one in the
8 upper right-hand corner, the date of entry, and what's
9 that date?

10 A The date of entry is when it was actually
11 serialized into the case law when it was approved,
12 supervision approved.

13 Q Sort of an administrative process to record
14 when the document has gone through the verification
15 process you've described?

16 A Correct.

17 Q And formally added to the case file?

18 A Correct.

19 Q Got it. And then there's a date down at the
20 bottom -- there's actually two dates down at the
21 bottom, but I'm interested in the one on the right,
22 the date drafted, do you see that?

23 A Yes.

24 Q And what date is that?

25 A February 11th.

1 Q February 11th?

2 A Yes.

3 Q Okay. Which is the day after the interview
4 that had taken place February 10th?

5 A Correct.

6 Q So very close in time, the next day?

7 A Correct.

8 Q Yes, okay.

9 MR. FAYHEE: Now, Your Honor, I would
10 like to now at this time publish this document. I'd
11 like to ask Special Agent Jackson some questions
12 regarding it.

13 MR. MURRAY: I'm not sure, Your Honor
14 -- I believe this could be used to refresh his
15 recollection, but it's not -- you know, it's a hearsay
16 statement and I'm not sure that it's appropriate for
17 it to be admitted into evidence.

18 MR. FAYHEE: Your Honor, respectfully,
19 this is a suppression hearing, I'm not sure the Rules
20 of Evidence apply. Second, I'm going to use it to
21 impeach him -- hopefully effectively, but I'm going to
22 use it to impeach him on the testimony he just
23 provided and it's being offered for that purpose.

24 THE COURT: Well, does it have to be
25 admitted for that under those circumstances? Is your

1 position that it doesn't have to be admitted?

2 MR. FAYHEE: Your Honor, I don't
3 believe it has to be formally admitted, but I would
4 like for it to be published so everybody can follow
5 along.

6 THE COURT: Well, there's no question
7 that everybody can follow it along. I'm not going to
8 decide at this moment whether it should be admitted --

9 MR. FAYHEE: Fair enough.

10 THE COURT: -- but you can ask
11 questions and --

12 MR. FAYHEE: Thank you.

13 THE COURT: -- we all have a copy.

14 MR. FAYHEE: Thank you, Your Honor.

15 THE COURT: So let's see what happens.

16 BY MR. FAYHEE:

17 Q So, Special Agent Jackson, I'm not sure if
18 you've reviewed this document --

19 THE COURT: This is probably part of
20 the record, isn't it, already?

21 MR. MURRAY: It's been produced in
22 discovery, but it's not one of the Government's
23 exhibits in this moment.

24 THE COURT: Okay, all right.

25 BY MR. FAYHEE:

1 Q Excuse me, Special Agent Jackson, I know I'm
2 giving you this document at this time and I know
3 you've read it previously because you just testified
4 that you approved it, I don't want to catch you off
5 guard at all. So if you need a couple of moments to
6 review it, I'd be glad to give it to you, unless you
7 can recall it specifically.

8 A If you can give me a minute.

9 Q Sure.

10 (Pause)

11 MR. FAYHEE: Excuse me, Your Honor, I
12 think -- we recognize, I think, we have given your law
13 clerk an incorrect document --

14 THE COURT: That would be better if she
15 has a correct one. Thank you. All right, let the
16 record reflect that this new --

17 MR. GROVE: Exhibit 5, Your Honor.

18 THE COURT: -- Exhibit 5 is the
19 accurate one. Okay, Beatrix?

20 (Pause)

21 THE WITNESS: Okay.

22 BY MR. FAYHEE:

23 Q Okay? So having just re-reviewed the
24 document again, drafted by Special Agent Fear and
25 validated or approved by yourself, at the bottom of

1 what's marked as page 141 on the document, if you can
2 get there, there's brackets and it says, "Agent note."

3 A Yes.

4 THE COURT: What page is it?

5 MR. FAYHEE: Your Honor, it's the
6 bottom of page 141 on Exhibit 5.

7 THE COURT: I don't see it.

8 MR. FAYHEE: Excuse me, I'm referring,
9 Your Honor -- by the way, when I say page number, I'm
10 referring to the Bates labels. I apologize. You'll
11 see Bates labels at the bottom of the page. It should
12 say USA000-141.

13 THE COURT: 139 -- oh, I see.

14 MR. FAYHEE: Do you see it? Do you
15 have it? Okay.

16 THE COURT: All right, so it's Bates
17 number 141, right?

18 MR. FAYHEE: That's correct, Your
19 Honor. That's correct, Your Honor.

20 THE COURT: Okay. I have it as page 3,
21 is that correct?

22 MR. FAYHEE: Probably page 3 of that,
23 yeah. I should have said Bates number --

24 THE COURT: That's okay.

25 MR. FAYHEE: -- instead of page number.

1 That's correct.

2 THE COURT: Okay.

3 BY MR. FAYHEE:

4 Q Now, at the bottom there in brackets,
5 Special Agent Jackson, it says, "Agent's note. Hovan
6 signed an FD-26 consent to search form authorizing
7 agents to search both his iPhone X, which is his work
8 phone, and his Samsung Note 9 phone, which is his
9 personal phone. Hovan provided as his passcode to his
10 iPhone and stated that there was no passcode on his
11 Samsung phone."

12 Do you see that?

13 A Yes.

14 Q And that's the statement that you approved?

15 A Yes.

16 Q Okay. Now, do you recall who specifically
17 drafted this agent note? Was it Special Agent Fear or
18 was that something you made as an addition later?

19 A The agent note portion of it?

20 Q Uh-huh.

21 A That was Special Agent Fear.

22 Q Okay. And nowhere in this 302 that's
23 intended to be a summary of the interview does it
24 indicate that Mr. Hovan's passcodes were provided
25 prior to him receiving the consent form, you didn't

1 find that anywhere in there, did you?

2 A Those passcodes were provided prior to him
3 signing?

4 Q Correct.

5 A No, I don't see it in here, no.

6 Q All right. And nowhere in there does it
7 indicate that Mr. Hovan was advised, verbally advised
8 of his right to refuse consent?

9 A No.

10 Q And nowhere does Special Agent Fear in that
11 document state or reflect in summary even that it was
12 stated we're going to look at both phones regardless,
13 did you find that anywhere?

14 A No.

15 Q No. Does it reflect anywhere in that
16 document that Mr. Hovan, prior to receiving the
17 consent form, stated, "You're probably going to look
18 at them" -- referring to the phones -- "anyway"?

19 A No.

20 Q No. Now, as part of your role as an FBI
21 Special Agent on the squad and having participated in
22 this interview, were you involved at all in assisting
23 the U.S. Attorney's Office in identifying discovery in
24 this matter?

25 A No.

1 Q No? Okay. And was it your responsibility
2 to maintain the audio recording of Mr. Hovan's
3 interview?

4 A We submitted it to our -- what do you call
5 it, our ELSUR department where they maintain all the
6 recordings of any interviews.

7 Q And ELSUR refers to what?

8 A Electronic surveillance. They take care of
9 all the interviews, anything that's documented or
10 recorded; they keep a copy of it there.

11 Q Sometimes FBI agents will refer to them as
12 the tech guys, is that right?

13 A No, that's a different set --

14 Q You never heard that?

15 A That's a different set of people, yeah.

16 Q A different set of people. What does the
17 ELSUR -- what does ELSUR stand for?

18 A Electronic surveillance.

19 Q Surveillance? And what do they do?

20 A Like I said, they document and they -- once
21 we submit a recording, it's their responsibility to
22 maintain it and make sure it's not tampered with,
23 anything of that nature.

24 Q They sort of maintain it as evidence?

25 A Yes.

1 Q Okay. And do you recall whether you -- do
2 you remember how the interview was recorded, through
3 what means?

4 A A recorder.

5 Q Okay. So like a -- surely not the old-
6 fashioned audio recorder, it's a digital recorder of
7 some sort?

8 A Yes.

9 Q And is that something that you possess and
10 put on the table or is it already in the room?

11 A No, it was on the table.

12 Q Okay. So you place it on the table
13 yourself?

14 A Correct.

15 Q And was that your role or was that Special
16 Agent Fear, do you remember?

17 A As far as the recorder, I believe I put it
18 on there.

19 Q You did, okay. And once the interview is
20 done, what do you do with that recorder?

21 A We download it and then, as soon as we
22 download it, we take it over to the ELSUR department
23 so they can maintain it.

24 Q Okay. Now, you download it yourself from
25 the recorder?

1 A Yes, I believe so.

2 Q Okay. And then you hand it off to the ELSUR
3 folks?

4 A Correct.

5 Q And so their role is really to maintain it
6 and --

7 A Yes.

8 Q -- house it? Okay. Do you remember when
9 you provided the audio recording to the ELSUR
10 department?

11 MR. MURRAY: Your Honor, objection,
12 relevance. I think there's no question as to the
13 authenticity of this recording. I don't know where
14 we're going with this.

15 MR. FAYHEE: Your Honor, I'd be glad to
16 state the relevance. If I could ask two more
17 questions and then I'll do so, if that's all right.

18 THE COURT: Okay.

19 BY MR. FAYHEE:

20 Q Do you recall the day that you handed off
21 the ELSUR recording?

22 A I don't recall the exact date, but it was
23 probably within a day or so of having the interview
24 conducted.

25 Q Okay. It certainly --

1 THE COURT: Having what?

2 THE WITNESS: Having the interview
3 conducted.

4 THE COURT: Okay.

5 BY MR. FAYHEE:

6 Q It certainly wasn't weeks --

7 A No, I don't --

8 Q -- or months, that would be not standard --

9 A No, I don't believe so.

10 Q And their job is to maintain it so that
11 later, here in these courtrooms and the U.S.
12 Attorney's Office can make use of that recording,
13 correct?

14 A Correct.

15 Q Okay. And at the time when the Government
16 was bringing this case, do you recall whether you were
17 relied upon in order to produce this audio file or
18 whether that would have been somebody else within the
19 FBI?

20 A To produce it for discovery?

21 Q Yes.

22 A It probably would have been one of the case
23 agents.

24 Q Okay. Not you?

25 A No.

1 Q Okay. And so, even though you checked it
2 into ELSUR, another case agent can go access it and
3 produce it for discovery?

4 A Yes.

5 Q Okay. And so did the U.S. Attorney's Office
6 ever ask you to produce directly this recording?

7 A Not to my knowledge, no.

8 Q Not to your knowledge, okay. Were you aware
9 that the Government produced this recording for the
10 first time --

11 MR. MURRAY: Objection --

12 BY MR. FAYHEE:

13 Q -- to us on March --

14 MR. MURRAY: -- objection, Your Honor.

15 THE COURT: What does this --

16 MR. FAYHEE: Can I finish the question?

17 THE COURT: -- have to do --

18 MR. MURRAY: This doesn't go to consent
19 at all, I don't --

20 THE COURT: No, please --

21 MR. MURRAY: Sorry, forgive me.

22 THE COURT: -- repeat what you were
23 going to say.

24 MR. MURRAY: Well, just to say, Your
25 Honor, objection. This doesn't go to consent at all.

1 I think Mr. Fayhee is making a complaint about the
2 timing of the production of this, but the production
3 of this record doesn't go to consent. I don't see how
4 --

5 THE COURT: Well, what are you trying
6 to --

7 MR. FAYHEE: Your Honor, it's no
8 problem. The point I'm making, if I could finish the
9 question, I was about to say March 3rd, 2021, which is
10 more than a year and a month after the arrest --

11 THE COURT: Well, this is --

12 MR. FAYHEE: -- and the point, Your
13 Honor, I'd make --

14 THE COURT: -- it doesn't have anything
15 to do with consent. So I'm going to sustain the
16 objection, that's --

17 MR. FAYHEE: Just for the record, Your
18 Honor, may I please just respond --

19 THE COURT: Of course.

20 MR. FAYHEE: -- just to perfect the
21 record? Your Honor, the reason for this examination
22 is because there is sufficient evidence through these
23 questions that there was an effort to compel Mr.
24 Hovan's consent, after having a search warrant in
25 place, we argue, at another day, that that's a

1 deficient search warrant, to obtain his consent and
2 then failed to reflect in the subsequent 302s the
3 problematic statements that the agents made in order
4 to secure that consent. And whether it's later in
5 argument or otherwise, I just simply wanted to lay the
6 foundation to make a legal argument at a later time
7 that in fact, for the record, I'm not going beyond
8 there, that the consent issue and the Franks issue
9 should in fact not be bifurcated, that they are
10 connected directly, and that's the only point I'm
11 making.

12 THE COURT: Well, unless I decide
13 against you on this issue.

14 MR. FAYHEE: And I'm only perfecting
15 the record, Your Honor, and I wanted to lay the
16 foundation to do it that I believe -- my position on
17 behalf of Mr. Hovan is that they are connected and I'd
18 like to make legal arguments to demonstrate that when
19 we conclude with the witness testimony. I simply
20 wanted to introduce that fact.

21 MR. MURRAY: And we just vigorously
22 dispute Mr. Fayhee's characterization of those facts
23 and certainly what this memorandum says and whether
24 there's any, you know, information materially left out
25 of it. So that's it.

1 THE COURT: Well, he has to make his
2 argument and you have to certainly make yours.

3 MR. MURRAY: Thank you.

4 MR. FAYHEE: Thank you, Your Honor.

5 One final -- excuse me, I have two very short exhibits
6 and, Your Honor, I'll follow the same protocol as I --

7 MR. MURRAY: Thank you.

8 MR. FAYHEE: Your Honor, if I may
9 approach?

10 (Pause)

11 MR. FAYHEE: Your Honor, I'm handing up
12 what's been marked as Exhibit 6.

13 THE COURT: We don't have one --

14 MR. FAYHEE: Oh.

15 THE COURT: Thank you. Thanks.

16 BY MR. FAYHEE:

17 Q And Special Agent Jackson, once again, this
18 is a much shorter one, but I'd like to give you the
19 opportunity to review that document --

20 A Okay, thank you.

21 Q -- and let me know --

22 (Pause)

23 A Yes, sir.

24 Q Okay. Now, we've familiarized ourselves
25 with these forms, so I'll move it through quite

1 quickly, but do you recognize the document marked as
2 Exhibit 6?

3 A Yes.

4 Q And what is it?

5 A It is a 302 memorializing Mr. Hovan gave
6 passwords to his laptop and his iPad and --

7 THE COURT: I'm sorry --

8 THE WITNESS: -- Mr. Hovan --

9 THE COURT: -- I know you don't mean to
10 mumble a little bit --

11 THE WITNESS: No, it's fine. No, Mr.
12 Hovan provided passwords for his laptop, his iPad, and
13 his, I guess, user name for his AT&T ID.

14 BY MR. FAYHEE:

15 Q Okay. And can you tell from looking at the
16 document who the primary drafter of this document was?

17 A That would be me.

18 Q Okay. And is that because at the bottom I
19 see your name, but it's in all caps, is that correct?

20 A No, just whatever name is first --

21 Q Oh, okay.

22 A -- is usually the one, yeah.

23 Q I was thrown by that, okay, because it's the
24 first name.

25 A Uh-huh.

1 Q All right. And then, as we discussed the
2 last time with the last FBI 302, Jessica Fear, Special
3 Agent Fear approves it?

4 A Correct.

5 Q In other words, validates the document. Do
6 you remember drafting this document?

7 A Vaguely, yes.

8 Q Okay. And just to help out to orient you to
9 the time, there's a date at the bottom you see there,
10 "Date drafted"?

11 A Yes.

12 Q And what is that?

13 A February 14th.

14 Q 2020?

15 A Yes.

16 Q Okay, some three days following the
17 interview, correct?

18 A Correct.

19 Q And then the date of entry, February 24th,
20 2020, some 14 days following the interview, correct?

21 A Correct.

22 Q All right. Now, can you tell me why was
23 this document created?

24 A To memorialize Mr. Hovan providing us his
25 passwords and username.

1 Q And is there a reason why this was done
2 separate from the summary of the interview?

3 A This happened after the interview, if I'm
4 not mistaken.

5 Q Because it relates to the laptop password,
6 the iPad password, and the username?

7 A Correct.

8 Q Rather than the two mobile phones we talked
9 about earlier?

10 A Correct.

11 Q Okay. Do you remember at what point Mr.
12 Hovan provided these passwords?

13 A I don't remember exactly when, I just know
14 it was after the interview had concluded.

15 Q Okay. So it's not captured on the
16 recording?

17 A No.

18 Q But it's before he was taken for further
19 processing to be handed off to another agency, the
20 Marshals?

21 A Yeah, it was sometime between the end of the
22 interview and before he was handed off to the
23 Marshals.

24 Q Okay. And was a separate consent form
25 utilized for this?

1 A No.

2 Q You relied on the earlier consent form for
3 this or something else?

4 A I don't really -- we didn't rely on any
5 consent form because it was he provided it, we didn't
6 ask for it, and we didn't have a consent form present
7 I believe when he actually did provide it.

8 Q Okay.

9 A And if you read the prior consent form,
10 you'd know that he was doing it voluntarily.

11 Q Okay. If he read it?

12 A Well, I know he read it because he was right
13 in front of me when he signed it, so he should have
14 read it.

15 Q All right. And so when you say here, "While
16 in the custody of Special Agent Fear and Special Agent
17 Jackson, Hovan, unprovoked, verbally provided agents
18 with the password and username to his laptop and
19 iPad," and I was just interested in what that means --
20 what you witnessed when he, unprovoked, provided
21 agents with the password and username?

22 A I'm sorry, so what's your question?

23 Q What happened? I see here, I read,
24 "unprovoked," but I'm interested in what you witnessed
25 at that time.

1 A Just that he volunteered it, and it goes
2 back to the interview where he said he would be
3 willing to cooperate any way he could and be truthful.
4 We didn't ask for any of this, he willingly gave it to
5 us.

6 Q So the interview concludes, you turn off the
7 recorder, and -- I mean, can you walk me through what
8 happened? I'm just curious. I don't -- I'm not
9 following very well.

10 A After the recorder was turned off, we went
11 over, had him processed, fingerprint, buccal swab, and
12 leaving that with Pretrial Services. Once he spoke to
13 them, shortly after, he was escorted over to the
14 Marshals. So this happened sometime in that -- I
15 don't know when, but just in that timeframe.

16 Q Okay. So you don't know whether this
17 happened immediately after the interview or through
18 the process of being processed by the Marshals?

19 A Yeah, I don't recall exactly when.

20 Q Do you remember -- I know it's been a while
21 ago, February 10th, 2020 -- do you remember how long
22 it took following the conclusion of the interview, in
23 other words, when the recording goes off, to then be
24 processed by the Marshals?

25 A Uh, maybe -- roughly about two and a half

1 hours maybe, somewhere --

2 Q Two and a half hours?

3 A -- somewhere in there.

4 Q Okay. And what happened in the course of
5 two and a half hours?

6 A Two and a half hours, we escorted him over
7 to our processing room in the building across from
8 where he was interviewed at. We don't have more than
9 one person in there at a time if they're being
10 processed and we had to wait for several people ahead
11 of us. So it was a waiting time there. Going in
12 there to process him, fingerprint him -- what do you
13 call him -- fingerprint him, buccal swab him, call
14 Pretrial Services, wait for them to come up. Once
15 they come up, meet with him however long, they take as
16 long as they need because it's his legal right to talk
17 to them. Then we go back -- escort him back to the
18 car and then we had to take him over to the Marshals,
19 had to wait for them to actually come out and get him.
20 So, yeah, it's a little timely process.

21 Q And how long were you -- how long were you
22 waiting and where?

23 A Waiting --

24 Q To begin the -- excuse me, let me ask you
25 again -- to begin processing all the things you

1 helpfully set out there, just to begin that process,
2 where were you waiting with Mr. Hovan? Because you
3 said there's one person at a time that can go in
4 there.

5 A In a separate room.

6 Q Just waiting in a separate room?

7 A Correct.

8 Q Okay. You didn't wait in your car or in the
9 transport car?

10 A No.

11 Q Did you make use of the car to get from the
12 FBI building --

13 MR. MURRAY: Objection, Your Honor, on
14 relevance here. This is no longer about consent with
15 respect to the phones.

16 MR. FAYHEE: As long as the Government
17 is willing to concede they're not going to use any of
18 the evidence related to this consent. It doesn't say
19 on the form, Your Honor, when he got this consent, so
20 I'm just trying to figure out what happened.

21 MR. MURRAY: Your Honor, that's not the
22 issue here. I mean, we've previously said we don't
23 intend to use information from those devices, you
24 know, but -- you know, if there's something determined
25 on them, we revisit it and ask the Court to address it

1 at that time, but the issue is not the consent with
2 respect to these other devices and this is --

3 THE COURT: Okay, the only device --

4 MR. FAYHEE: Fair enough.

5 THE COURT: -- all right, that's
6 acceptable.

7 MR. FAYHEE: I'll move on, Your Honor,
8 I'll move on. All right, final document, Your Honor,
9 final document.

10 MR. MURRAY: Thank you.

11 MR. FAYHEE: This one, Your Honor, is
12 marked -- I may be one short here, Tyler.

13 (Pause)

14 BY MR. FAYHEE:

15 Q I'm handing up what's been marked as Exhibit
16 7. Please take your time, once again --

17 THE COURT: You don't have a -- do you
18 have a copy? Oh, you have it. Okay, great. Thank
19 you. Sorry.

20 All right, you may proceed.

21 BY MR. FAYHEE:

22 Q Special Agent Jackson, if you want to take
23 some time to read through it again, I know you're just
24 reading this.

25 A Yeah, thank you.

1 (Pause)

2 A Yes, sir.

3 Q Okay, thank you. So this document -- I'll
4 lead you through this a little bit, if it's okay --
5 it's also an FBI 302, the same type of form we talked
6 about earlier, correct?

7 A Correct.

8 Q Now, this form doesn't have your name on the
9 byline down here, does it, it has somebody else's
10 name?

11 A Correct.

12 Q And who is that?

13 A One of the case agents.

14 Q Okay. And who is it? Is it Special Agent
15 McKandy (ph) --

16 A Yes.

17 Q -- am I saying it right?

18 A Correct.

19 Q Okay. And he's on your squad?

20 A No, he's on a different squad.

21 Q On a different squad, okay. Was he a case
22 agent assigned to this matter at the time of the
23 arrest?

24 A Yes.

25 Q Yes, okay. And it says down here, "Date

1 drafted 4/5/2021," down in the right-hand corner?

2 A Yes.

3 Q And, again, that's the date that it's
4 originally transcribed, is that what that means? Or
5 how do you determine what date that is?

6 A The date drafted is when the document is
7 actually started.

8 Q And is that typing rather than handwritten
9 notes, the day it started?

10 A Yeah, yes, sir.

11 Q And is that automated in the system when it
12 begins in the FBI system?

13 A Yes.

14 Q Okay, makes sense. And then up at the top
15 it says, "Date of entry," do you see that?

16 A Yes.

17 Q And the date of entry here is June 28, 2021,
18 do you see that?

19 A Yes.

20 Q And when is that?

21 A You said -- oh, that's when it's approved
22 and put into the case file.

23 Q When validated or added to the case file?

24 A Yeah.

25 Q And that's yesterday, isn't it?

1 A Yes.

2 Q Yeah, okay. So this was entered in the case
3 file yesterday, but drafted on April 5th, 2021. Now,
4 correct my mis -- I'm just moving things along here --
5 correct any misimpressions I have, but it appears to
6 depict meetings that you were having with the U.S.
7 Attorney's Office regarding this matter, is that
8 correct?

9 A Correct.

10 Q Okay. And is it appropriate to characterize
11 this as sort of preparatory meetings with the U.S.
12 Attorney's Office looking to determine what it is you
13 saw and witnessed for the purposes of preparing for
14 this hearing?

15 MR. MURRAY: Objection. It doesn't
16 refer, I don't believe, to a meeting, but it indicates
17 via telephone.

18 MR. FAYHEE: Excuse me, Your Honor.

19 BY MR. FAYHEE:

20 Q Does it reflect a telephone conversation you
21 had with the U.S. Attorney's Office for the purposes
22 of preparing for today?

23 A Correct.

24 Q Okay. Now, I was interested -- this is page
25 -- the front page, page 1, and it says in the second

1 paragraph, second sentence, "Consistent with Special
2 Agent Jackson's normal process, he read the advice-of-
3 rights form verbatim to Hovan before Hovan signed it,
4 confirming Hovan could read and write."

5 And then it says, "Hovan offered several times to
6 tell/give agents whatever they wanted and that he
7 would tell the truth." Is that correct?

8 A Where is that at again?

9 Q I'm sorry, that's the very -- it's the
10 second paragraph on page 1 --

11 A Okay.

12 Q -- beginning with the second sentence.

13 A Second paragraph, second sentence, from the
14 beginning of the interview?

15 Q I'm sorry. So it's the second paragraph
16 beginning, "During his custodial interview"?

17 A Okay, on 2 -- okay, on 2/10/2020.

18 Q Yeah.

19 THE COURT: Well, that's not the second
20 sentence, that's the first sentence.

21 MR. FAYHEE: Yeah, sorry, I was just
22 indicating the paragraph so he could find it more
23 easily.

24 BY MR. FAYHEE:

25 Q But I was referring, Special Agent Jackson,

1 just to be certain, to the part where it says
2 "consistent with Special Agent Jackson's normal
3 process."

4 MR. MURRAY: So, Your Honor, I'm just
5 going to object to this report again. I thought Mr.
6 Fayhee was going to perhaps confront the witness with
7 an inconsistent statement. I don't believe this
8 document has been admitted into evidence, I don't
9 think it should be. If there's an inconsistent
10 statement or prior statement that it would be
11 appropriate to confront him with, but otherwise these
12 aren't his words. This was a document produced in
13 Jencks and we object to reading through this report
14 that another agent wrote.

15 MR. FAYHEE: Your Honor, this is a
16 statement of Mr. Jackson regarding the events of
17 question, it was produced to us at 7 o'clock last
18 night. There's inconsistencies I'm about to get to,
19 particularly with respect to the following paragraph
20 that begins, "Unprompted." So I'm not sure what the
21 objection is other than, you know -- well, I don't
22 know what the objection is.

23 MR. MURRAY: The objection is he was
24 just reading the document that's not in evidence, you
25 know, to the agent. If there's an inconsistent

1 statement, he can ask the agent about that, and that's
2 what we would think would be an appropriate purpose
3 for this document.

4 MR. FAYHEE: Your Honor, I was just
5 simply acclimating the agent to the interview. I'm
6 happy to skip on. I'm interested to disclose my
7 impeachment theory to the Court --

8 THE COURT: Okay.

9 MR. FAYHEE: -- to talk about this
10 statement that begins, "Unprompted."

11 THE COURT: All right, why don't you do
12 that.

13 BY MR. FAYHEE:

14 Q Okay. So next paragraph, Special Agent
15 Jackson, there's a comment here that says,
16 "Unprompted, Hovan told the agents" --

17 THE COURT: That's page 2?

18 MR. FAYHEE: Excuse me, still page 1,
19 this is paragraph 3 beginning, "Unprompted."

20 THE COURT: At one point in Hovan's
21 interview -- I thought it was on the next page.

22 "Unprompted, Hovan told the agents" --

23 MR. FAYHEE: That's right, that's
24 correct.

25 THE COURT: So that's the second page?

1 MR. MURRAY: I think, Your Honor --

2 MR. FAYHEE: Oh, I'm sorry, let me --

3 MR. MURRAY: -- I think there might be
4 some confusion --

5 THE WITNESS: It's two documents.

6 MR. MURRAY: -- because the exhibit
7 includes two different reports here. The first page
8 is the interview of Agent Fear, and I don't believe --

9 MR. FAYHEE: It's possible --

10 MR. MURRAY: -- that Mr. Fayhee is
11 attempting to ask Agent Jackson what Agent Fear's memo
12 says. The second page starts with the interview of
13 Agent Jackson. So the first page of Agent Jackson's
14 memoranda, the third paragraph, I believe is what Mr.
15 Fayhee is asking about.

16 THE COURT: Of the second -- of the
17 second page, is that --

18 MR. FAYHEE: Yeah, and thanks to Mr.
19 Murray for clarifying. I'm sorry, Your Honor, what I
20 think has happened is I think I've handed you both
21 interviews as an exhibit and I'll correct that. My
22 intention was to hand you what's marked as 1 of 2 that
23 begins, "FBI Special Agent SA Christopher Jackson" --

24 THE COURT: So you don't even want me
25 to look at 1 of 1?

1 MR. FAYHEE: Exactly, Your Honor.

2 THE COURT: All right. Well, let's --

3 MR. FAYHEE: That was a mistake --

4 THE COURT: -- let's strike this.

5 MR. FAYHEE: -- I apologize.

6 THE COURT: Okay. Well, then I have to

7 -- and that's Exhibit 7?

8 MR. FAYHEE: That's Exhibit 7.

9 THE COURT: Well, one second. Why
10 don't you -- I'm taking the sticker off and putting it
11 on what you're focusing on, is that correct?

12 MR. FAYHEE: That's correct, Your
13 Honor.

14 THE COURT: Okay, all right.

15 MR. FAYHEE: And so now with what is
16 properly marked as Exhibit 7 --

17 THE COURT: All right.

18 BY MR. FAYHEE:

19 Q I'm referring, Special Agent Jackson, to the
20 paragraph that begins "Unprompted," do you see that?

21 A Yes.

22 Q Okay. It says, "Unprompted, Hovan told the
23 agents they could look through whatever they want and
24 offered to cooperate."

25 Now, when you made that statement as recorded in

1 this interview by another agent, what did you mean by
2 "unprompted"?

3 A That he was voluntarily offering to
4 cooperate.

5 Q Okay. Now, when using that term,
6 "unprompted," did his offer to cooperate and, quote,
7 "look through whatever they want," did that come
8 before or after the consent form was presented to Mr.
9 Hovan?

10 A Whether he -- say that one more time? I'm
11 sorry.

12 Q Yep, so one more time. When you say
13 "unprompted" --

14 A Uh-huh.

15 Q -- yeah?

16 A Yes.

17 Q And what you're reflecting here that Mr.
18 Hovan stated they can look through whatever they want
19 and offered to cooperate, was that before or after Mr.
20 Hovan was presented with a consent form?

21 MR. MURRAY: Objection to the beginning
22 of the form of that question. Mr. Fayhee says, "when
23 you say unprompted," this is a summary of an interview
24 of this agent, you know, he's not saying that he said
25 it.

1 THE COURT: All right, why don't you --
2 well, somebody who said it in the FBI?

3 MR. FAYHEE: Well, Your Honor, this was
4 presented last night at 7:00 p.m. as Jencks material
5 by the Government for the purposes of this witness
6 testimony. I mean, I can ask him whether he adopts
7 the statements made by him and recorded here, if that
8 would help build a proper foundation.

9 THE COURT: Okay. Well, why don't you
10 do that?

11 BY MR. FAYHEE:

12 Q Special Agent Jackson --

13 A Yes.

14 Q -- having reviewed this material related to
15 statements attributed to you, drafted by another FBI
16 agent, does this fairly and accurately depict the
17 conversation you had by phone with the U.S. Attorney's
18 Office on April 5th of 2021?

19 A To my knowledge, yes.

20 Q Okay. So do you recall at that time making
21 a statement to the U.S. Attorney's Office and recorded
22 in this FBI 302 to the following effect: "Unprompted,
23 Hovan told the agents that they could look through
24 whatever they want and offered to cooperate"?

25 A Yes.

1 Q When you made that statement and recounted
2 for the U.S. Attorney's Office what happened on
3 February 10th, 2020, did what you are describing here
4 happen before or after Mr. Hovan was presented with a
5 consent form?

6 A As far as his cooperation, it was before and
7 after.

8 THE COURT: I didn't -- say that again?

9 THE WITNESS: As far as his
10 cooperation, it was before and after.

11 BY MR. FAYHEE:

12 Q All right. So -- but the question I asked
13 had to do with his statement that agents could look
14 through whatever they want.

15 A Correct.

16 Q Correct it was before the consent form was
17 put before him, yes?

18 A Yeah, he said it before.

19 Q Right. And then next you say, "Before Hovan
20 started voluntarily showing the agents his phone,
21 Special Agent Jackson brought out the consent-to-
22 search form so Hovan could sign it first." Correct?

23 A Yes.

24 Q All right. And then it reflects here that
25 "Special Agent Jackson did not read the consent-to-

1 search verbatim to Hovan since Hovan demonstrated he
2 could read, write, and already had clearly consenting
3 voluntarily." Correct?

4 A Yes -- well, let me back up. "Before Hovan
5 started voluntarily showing the agents his phone," he
6 didn't really show us his phone. He was just telling
7 us the passcodes. We didn't look through any of it
8 before the consent was signed.

9 Q Well, but you testified earlier that you
10 witnessed Special Agent Fear ask him for the
11 passcodes, correct?

12 A Ask him for them, yes, but I'm talking about
13 we didn't look through the phone before consent or
14 anything like that.

15 Q No, understood. So once again my question
16 is it states, "Special Agent Jackson did not read the
17 consent-to-search form verbatim to Hovan since Hovan
18 demonstrated he could read, write, and he had already
19 been clearly consenting voluntarily," is that correct?

20 A Yes, that's what it reads, yes.

21 Q Okay. Now, this statement in this form
22 drafted April 5th, 2021 and produced last evening
23 after it was entered, that language does not appear,
24 if you refer back -- take all the time you need, but
25 if you refer back to the previous exhibit, Exhibit

1 Number 6, it doesn't appear anywhere in that document,
2 does it?

3 A As far as the consent -- or as far as
4 reading it to him verbatim, is that what you're
5 referring to?

6 Q Exactly.

7 A No, it's not in this -- not in Exhibit 6,
8 no.

9 Q And in the synopsis 302 that was referenced
10 earlier, that's Exhibit 5 that is intended to
11 summarize the interview, this statement that is
12 reflecting that you had not read verbatim the consent-
13 to-search form because he could read, write, and
14 already had been clearly consenting voluntarily, it
15 didn't appear in that synopsis either, did it?

16 A That would be Exhibit 5?

17 Q That would be Exhibit 5.

18 A No, it's not in this one.

19 Q In fact, prior to the entry of this form on
20 June 28, 2021, yesterday, in fact the statement only
21 appeared, the only source for it is the audio of the
22 interview and the accompanying transcript prepared for
23 this hearing, isn't that correct?

24 A Say that one more time?

25 Q So what I'm -- the question is, this

1 statement made in a document created and entered in
2 fact yesterday, June 28, this statement that I've just
3 read to you regarding your not reading the consent-to-
4 search form, it appears here very clearly in black and
5 white, but it doesn't appear in Exhibit 6, it doesn't
6 appear in Exhibit 5, and in fact only appears from the
7 audio recording or the transcript accompanying the
8 audio recording, isn't that correct?

9 A Right.

10 Q Right.

11 MR. FAYHEE: Your Honor, could I have
12 two minutes just to confer briefly?

13 THE COURT: Yeah, I'll count. Yes, you
14 may.

15 (Laughter)

16 MR. FAYHEE: Fair enough.

17 (Pause)

18 MR. FAYHEE: Okay, Your Honor, I think
19 that's my final question.

20 THE COURT: Okay, thank you. Okay.

21 MR. MURRAY: May I just do a few
22 questions? It shouldn't take long.

23 THE COURT: Oh, redirect?

24 MR. MURRAY: Yes.

25 THE COURT: Yeah, of course.

1 REDIRECT EXAMINATION

2 BY MR. MURRAY:

3 Q Agent Jackson, you've already testified that
4 you're not the case agent, right?

5 A Correct.

6 Q But you participated in this interview and
7 arrest, and then subsequently memorialized some of the
8 activities or read reports memorializing the
9 activities from February 2020, is that right?

10 A Correct.

11 Q And at that point in time Defendant Hovan
12 and his counsel hadn't yet made a motion challenging
13 the consent that was given in this interview, right?

14 A Not to my knowledge, no.

15 Q And so when the memoranda were created back
16 in February 2020, nobody from the U.S. Attorney's
17 Office asked you detailed questions about the consent
18 back at that time, is that right?

19 A No.

20 Q Were you made aware at some point --

21 THE COURT: No, no is a funny answer.

22 MR. MURRAY: Oh, let me confirm.

23 BY MR. MURRAY:

24 Q Is it correct that back in 2020 nobody
25 debriefed you regarding the consent that was given by

1 Mr. Hovan in this interview?

2 A Correct.

3 Q Did you learn at some point in approximately
4 March of 2021 that Mr. Hovan, through his counsel, had
5 made a motion challenging the consent that was given?

6 A Yes.

7 Q Were you surprised by that motion?

8 A Yes.

9 Q Why?

10 A Because --

11 MR. FAYHEE: Your Honor, I have to
12 object to this question. He's getting into, you know,
13 the statement -- the Agent's reaction to the
14 challenge, the legal challenge to consent, what does
15 that have to do with whether or not my client's
16 consent in the course of an interview occurring on
17 February 10th, 2020 was free and voluntary?

18 MR. MURRAY: My -- the question goes to
19 what -- let me rephrase it.

20 BY MR. MURRAY:

21 Q When you heard that there was a challenge,
22 what was your understanding, your recollection in
23 March, approximately March 2021, as to the nature of
24 the consent that was provided back in February 2020?

25 MR. FAYHEE: Your Honor, it's the same

1 objection. What relevance is the Agent's reaction to
2 my legal challenge on behalf of Mr. Hovan?

3 THE COURT: Overruled.

4 THE WITNESS: Could you repeat?

5 BY MR. MURRAY:

6 Q My question is, when there was a challenge,
7 did you recall the meeting from 2020?

8 A Yes.

9 Q And can you describe your impression in
10 approximately March 2021 or April 2021, your
11 recollection of that consent?

12 A That it was always unprompted and willful,
13 that he kept volunteering it.

14 Q And after you -- after the challenge was
15 made by Mr. Hovan to this consent, did members of the
16 U.S. Attorney's Office contact you to ask you more
17 detailed questions about that consent?

18 A Yes.

19 Q And was that a telephone call?

20 A Yes.

21 Q And was that approximately in the beginning
22 of April 2021?

23 A Yes.

24 Q And you don't know when this hearing was
25 scheduled, do you?

1 A No.

2 Q But at that point in time had it -- well,
3 subsequent --

4 MR. MURRAY: -- I'll ask no further
5 questions.

6 THE COURT: Yes, that's better.

7 MR. MURRAY: Thank you, Your Honor.

8 THE COURT: All right, but I'm going to
9 allow you further cross.

10 MR. FAYHEE: Your Honor, I think we've
11 made about every point we want to make --

12 THE COURT: All right, okay.

13 MR. FAYHEE: -- so I'm fine. Thank
14 you.

15 BY MR. MURRAY:

16 Q So you were asked several questions on page
17 --

18 THE COURT: Oh, I thought he was --

19 MR. MURRAY: Oh --

20 THE COURT: -- I thought you were
21 finished.

22 MR. MURRAY: Oh, I just had two other
23 sets of questions I wanted to do.

24 THE COURT: Oh, otherwise I wouldn't
25 have given him a chance to --

1 MR. FAYHEE: That's all right.

2 (Laughter)

3 MR. MURRAY: Sorry, Your Honor.

4 THE COURT: No problem.

5 BY MR. MURRAY:

6 Q Just on page 21 to 22 from line --

7 THE COURT: What exhibit?

8 MR. MURRAY: So this is Exhibit 1B,
9 it's the transcript.

10 THE COURT: Oh, okay.

11 BY MR. MURRAY:

12 Q Mr. Fayhee asked you a series of questions
13 --

14 THE COURT: Is that -- all right. Now,
15 let's -- what's the page?

16 MR. MURRAY: Page 21, going to page 22.
17 So the last two lines on page 21 starting, "And like I
18 said, like, have that looking at the WhatsApp
19 conversations and things like that."

20 BY MR. MURRAY:

21 Q At that point you were asked questions about
22 what Mr. Hovan was doing. Mr. Fayhee then asked you
23 questions about the statement about "probably" and
24 that language. And then at the end of that, after Mr.
25 Hovan says, "Have at the WhatsApp messages and things

1 like that," what does he offer to point you and Agent
2 Fear and the other representative of the FBI to on
3 lines 1 and 2 of page 22?

4 A "I'll point you to every single conversation
5 I've ever had."

6 Q And then my last set of questions is about
7 Exhibit 3. Can you please turn to that? This is the
8 consent-to-search form, correct?

9 A Correct.

10 Q It only has four points on that, right?

11 A Yes.

12 Q And the first point is listing the two
13 devices that were at issue here, correct?

14 A Yes.

15 Q And you went through a series of questions
16 with Mr. Hovan regarding those and he saw you write
17 those down on the form, correct?

18 A Correct.

19 Q So at the time that he was looking at the
20 form, there was only three more sentences on that
21 form, correct?

22 A Correct.

23 Q Point number 2, number 3, and number 4, is
24 that right?

25 A Correct.

1 Q Those are short sentences, right?

2 A Yes.

3 Q How long would you estimate that it takes
4 you to read those sentences?

5 A Myself, maybe ten seconds, if that.

6 Q And Mr. Fayhee in his estimation was that
7 there was 20 seconds when he asked you questions, is
8 that right?

9 A Yes.

10 Q And did you give Mr. Hovan a full
11 opportunity to read those sentences?

12 A Yes.

13 Q Did he ever ask you for more time?

14 A No.

15 Q After you gave him an opportunity to read
16 those sentences, did he sign this form?

17 A Yes.

18 Q And was he looking at the form when he
19 signed it?

20 A Yes.

21 Q And, lastly, question 2 states, "I have been
22 advised of my right to refuse to consent." How was
23 Mr. Hovan advised of that right?

24 A In writing on this document.

25 MR. MURRAY: No further questions, Your

1 Honor.

2 THE COURT: You can ask -- do you want
3 to go further?

4 MR. FAYHEE: Your Honor, I have one
5 question, it will take less than a minute.

6 RECROSS-EXAMINATION

7 BY MR. FAYHEE:

8 Q Special Agent Jackson, with respect to the
9 form that AUSA Murray just referenced --

10 THE COURT: You're talking about
11 Government Exhibit 3?

12 BY MR. FAYHEE:

13 Q I'm talking about Government Exhibit Number
14 3 -- it's true, isn't it, at this point, the point
15 that you handed this form to Mr. Hovan, you believed
16 he had already consented to the search, didn't you,
17 before you handed him the form?

18 A Do I believe he consented to the search
19 before he looked at this form?

20 Q Yes.

21 A Based on what he was telling us as far as
22 providing -- yeah.

23 Q Exactly. And so you treated this form as a
24 mere formality to put across from him and have him
25 sign it, didn't you?

1 A I wanted to have him memorize it so he
2 knows, I mean, he's going to consent --

3 Q And that's why it took -- that's why it took
4 only 20 seconds to both apply the date for him to sign
5 it and for you to sign it because it was a mere
6 formality, wasn't it?

7 A No, I wouldn't say it was a mere formality,
8 I think I just wanted -- it needed to be memorialized
9 so he knows that he's giving us consent, it's not just
10 -- he's not verbally -- he's not verbally expressing
11 it to us, he can see in writing that he's going to
12 give us that consent.

13 MR. FAYHEE: Thank you, Your Honor.

14 THE COURT: Okay, that's it.

15 (Witness excused)

16 THE COURT: Next witness, please.

17 MR. MURRAY: Your Honor, the Government
18 calls Agent Jessica Fear.

19 (Pause)

20 THE COURT: Okay.

21 MR. MURRAY: May I proceed, Your Honor?

22 THE COURT: Uh-huh, yeah --

23 MR. MURRAY: Thank you.

24 THE COURT: -- sure.

25 MR. MURRAY: I believe she needs to be

1 sworn is --

2 THE COURT: Yeah, I think that would be
3 helpful.

4 GOVERNMENT WITNESS, JESSICA M. FEAR, SWORN

5 THE CLERK: State and spell your name
6 for the record, please.

7 THE WITNESS: Jessica Fear, J-E-S-S-I-
8 C-A F-E-A-R.

9 THE COURT: That's a good name for the
10 agent, Fear.

11 (Laughter)

12 MR. MURRAY: I'll note that that is --
13 will be fair for it to be part of the argument here,
14 Your Honor.

15 MR. FAYHEE: I'll try to restrain
16 myself.

17 (Laughter)

18 DIRECT EXAMINATION

19 BY MR. MURRAY:

20 Q Agent Fear, how are you employed?

21 A I am a Special Agent with the FBI.

22 Q And for how long have you been a Special
23 Agent?

24 A Approximately eight and a half years.

25 Q And what type of cases do you normally work

1 on?

2 A Currently, I work on white collar
3 investigations.

4 Q Okay. And approximately how many arrests
5 have you participated in your career?

6 A Numerous.

7 Q And how many -- approximately how many post-
8 arrest interviews?

9 A Numerous as well.

10 Q And how many times have you obtained consent
11 from a defendant or witnesses?

12 A Many times.

13 Q Now, I'm going to ask you about the events
14 on February 10th of 2020. Did you participate in a
15 series of arrests on that day?

16 A Yes, I did.

17 Q And what were your responsibilities?

18 A I was responsible for arresting Mr. Nicholas
19 Hovan, which included transporting him, making sure
20 that he was processed, including fingerprinting and
21 photographed, as well as interviewing him and ensuring
22 that he was relinquished to the custody of the Federal
23 Detention Center.

24 Q And were you one of the case agents?

25 A I was not, no.

1 Q Were you assisting the other agents on the
2 case?

3 A Yes, I was.

4 Q Okay. And so can you explain to the Court,
5 at the time of the arrests, what happened?

6 A At the time of the arrests, myself and other
7 agents interrupted a meeting that was occurring at the
8 Hotel Monaco. There were several people in the room
9 that were going to be arrested that day and we had a
10 group of agents that went into the room. We asked
11 everyone to put their hands on the table, identified
12 ourselves as FBI, that we had warrants. And different
13 agents were responsible for just ensuring that we had
14 control of everyone in the room and then taking those
15 people into custody.

16 Q Did you go immediately to Mr. Hovan?

17 A I did not, no.

18 Q What did you do?

19 A As we filed into the room, I went to the
20 most logical person just to ensure that we were all
21 accounting for everyone in the room. So it wasn't
22 just because I was going to later be involved in
23 interviewing and transporting Mr. Hovan. There were
24 too many people in the room to try to focus in on him.
25 For safety reasons, it was just important to ensure

1 that every person in the room was secured.

2 Q And at some point subsequent to that did you
3 end up beginning to handle your responsibilities
4 directly with respect to Mr. Hovan?

5 A Yes, I did.

6 Q Can you explain what happened?

7 A Sure. I was still in the meeting room and
8 Mr. Hovan was transported down to a vehicle by two
9 other FBI agents. Someone notified me that he was in
10 the vehicle and that they were waiting for me. So I
11 went down and met Agent Jackson and Mr. Hovan and got
12 into the vehicle, and we transported him to the FBI
13 offices.

14 Q Now, at the time of the -- the time you went
15 into the room, approximately what time of the day was
16 that?

17 A Just before noon, approximately 11:55.

18 Q And then when you were down at the vehicle
19 and first encountered Mr. Hovan, approximately when
20 was that?

21 A About ten minutes later, maybe 12:05.

22 Q And then after that, when you were at the
23 car with Agent Jackson and Mr. Hovan, what happened
24 next?

25 A We transported him to 701 Market Street,

1 which is to a small interview room up there, which is
2 where the FBI's white collar branches have their
3 offices.

4 Q Now, about how long did it take to transfer
5 him?

6 A About five minutes, it was very short.

7 Q Okay. Throughout that time, can you
8 describe the time you were in the car and transferring
9 him to the interview room, can you explain what Mr.
10 Hovan's demeanor was like?

11 A He was calm, as calm as anyone could be. He
12 acted remorseful. I recall him talking about his
13 wife.

14 Q Okay. And at that point in time did you
15 begin questioning him substantively about any of the
16 matters in the case?

17 A No, we did not.

18 Q Did you at any time when you were
19 transporting him and bringing him to the room mention
20 a search warrant in this case?

21 A No, we did not.

22 Q Now, during this time period, did Mr. Hovan
23 appear alert?

24 A Yes.

25 Q Did he appear to understand what was

1 happening and respond to your questions and
2 directions?

3 A Yes, he did.

4 Q Now, when you got to the FBI room -- you
5 mentioned that it was in one of the FBI's white collar
6 offices?

7 A That's correct.

8 Q Now, at that point in time, did you initiate
9 an interview?

10 A Yes, we did.

11 Q And approximately when was that on February
12 10th, 2020?

13 A I believe the recording starts around 12:19.

14 Q Okay. And was that about 25 minutes after
15 the arrest?

16 A Approximately, yes.

17 Q Okay. And I'm going to ask you to describe
18 the room. Is it a room that you've been in before?

19 A Yes, it is.

20 Q So can you describe for the Court what the
21 room was like?

22 A Sure. It's a small interview room with a
23 circle table in the middle, neutral paint colors,
24 average lighting. It was a comfortable room
25 temperature.

1 Q Was it noisy in the room or outside the
2 room?

3 A No, it wasn't.

4 Q Okay. And who was present at the interview?

5 A There were four of us all together. So,
6 myself and Agent Jackson, along with Mr. Hovan, and
7 then a forensic accountant, Megan Weber, also joined
8 us for the interview.

9 Q Okay. And can you describe where everybody
10 was sitting during this interview?

11 A Sure. If you think of a circular table,
12 there was just four of us, so one person on each side.
13 Agent Jackson was to Mr. Hovan's right, I was to Mr.
14 Hovan's left, and Megan Weber, the forensic
15 accountant, was to my left.

16 Q And then did you end up recording this
17 interview?

18 A Yes, we did.

19 Q And I'm going to ask you to look at in the
20 binder before you Exhibit 1. There's a disc and,
21 behind the disc, there is a transcript marked 1B. Do
22 you recognize that transcript?

23 A Yes, I do.

24 Q Have you had an opportunity to review that
25 transcript and compare it to the audio recording of

1 this meeting?

2 A Yes, I have.

3 Q And is that transcript accurate in most
4 respects?

5 A Yes, it's an accurate reflection of the
6 words spoken with one small exception, there's a
7 slight phrase towards the end that Mr. Hovan speaks
8 that I had a hard time hearing exactly what he's
9 saying and I don't hear quite what's on this paper,
10 but it's just a very short phrase.

11 Q And we'll address that, but other than that
12 one instance that you heard when listening to it, is
13 it otherwise an accurate transcript, to the best of
14 your ability?

15 A Yes, it is.

16 Q Now, about how long did this interview last?

17 A Approximately 50 minutes.

18 Q And during the interview was Mr. Hovan
19 provided his Miranda warnings?

20 A Yes, he was.

21 Q And about when was this in the interview?

22 A Immediately, at the beginning.

23 Q And who did this?

24 A Agent Jackson walked him through the FD-395,
25 advice-of-rights form, and I witnessed that.

1 Q And did you -- did Mr. Hovan state that he
2 understood those rights and wanted to proceed?

3 A Yes, he did.

4 Q And did he appear to understand them?

5 A Yes, he did.

6 Q And did you have any reason to believe that
7 that statement wasn't willing and voluntary?

8 A No, not at all.

9 Q Now, can you summarize -- we're going to
10 listen to two clips of this interview, but -- near the
11 end, sort of the second third, can you summarize to
12 the Court what happened in the interview?

13 A Sure. So, from the start, Mr. Hovan was
14 very eager to talk to us and wanted to be cooperative.
15 He expressed several times throughout the desire to
16 help us in any way that we could to further the
17 investigation. He -- so from the start I think he
18 asked us, you know, where should he begin, and then he
19 gave an overall summary of his involvement in the
20 conspiracy from his perspective. And then we went
21 back through the chronology, and he talked about
22 specific meetings, so we went back over those
23 specifically to ensure that we had the facts in terms
24 of who was at those meetings and what the purpose was.

25 And then towards the end of the recording Mr.

1 Hovan provided verbal consent for us to search his
2 phones, at which point we had discussions about
3 passcodes for his phones and we completed a written
4 consent-to-search form confirming his verbal consent.
5 And he walked me through some of the relevant
6 communications, from his standpoint, in his phone.

7 Q And we're going to listen to that portion
8 about him walking you through, but we haven't -- it
9 hasn't been before the Court in this hearing yet.
10 When you say he walked you through his phone, what --
11 can you explain what that means?

12 A Sure. We were looking at his phone
13 together. He was flipping through the specific
14 communication strings and pointing out to me the
15 different names of the groups, if it was a group chat,
16 and then the different people that were involved and
17 who they were in terms of who we had been asking about
18 earlier that day.

19 Q And so were you both looking at the content
20 of the phone simultaneously during that section?

21 A Yes, we were looking at it together.

22 Q Now, through that process, can you describe
23 Mr. Hovan's demeanor?

24 A Sure. He was calm, as relaxed as anyone
25 could be given the circumstances. He was alert, like

1 you mentioned earlier; he seemed intelligent. He was
2 responsive to all the questions that we asked in an
3 appropriate way, and he was very eager to cooperate
4 and help us however he could.

5 Q Okay. And you mentioned that he was eager
6 to help you, were you able to assess his intelligence
7 during this meeting?

8 A He seemed very intelligent and educated.

9 Q Did he seem to understand the questions and
10 issues that you were raising?

11 A Yes, he did.

12 Q Did you have any question that he was
13 confused about the words you were using or the
14 documents that you were putting in front of him?

15 A Not at all. In fact, a lot of times he
16 anticipated where we were going. He was clearly
17 following the interview and understood what was going
18 on.

19 Q Now I'm going to ask you to look at
20 Government Exhibit 4 --

21 A Okay.

22 Q -- in your binder. Are you familiar with
23 this document?

24 A Yes, I am.

25 Q And what is this document?

1 A This is a LinkedIn page related to Mr. Nick
2 Hovan.

3 Q Okay. And is it your understanding that an
4 analyst or somebody working from the FBI obtained this
5 from the Internet from the LinkedIn application?

6 A Yes, that's correct, from the LinkedIn site.

7 Q And then, with respect to this, I'm just
8 going to ask you about a couple things. Turning to
9 the second page, does this LinkedIn profile summarize
10 Mr. Hovan's education?

11 A Yes, it does.

12 Q And where does it say he went to high
13 school?

14 A It says he went to St. Andrew's School.

15 Q And do you know anything about that?

16 A I don't. I imagine it's a private school
17 from the name.

18 Q All right. And then it says he went to
19 university, which university?

20 A He went to Bucknell University.

21 Q And from what years did he go there?

22 A Approximately -- it says 2004 to 2008.

23 Q And does it indicate that he received
24 degrees?

25 A Yes, it does.

1 Q And what are those?

2 A B.S.B.A. and E.A. So I believe a bachelor
3 of science and business administration is I believe
4 what that stands for, and a bachelor of arts in
5 management and English.

6 Q And then, lastly, does this, going from the
7 second page up to the first page, summarize Mr.
8 Hovan's work experience?

9 A Yes.

10 Q And does it summarize approximately ten
11 years of work experience, including a position as a
12 client solutions executive at AT&T starting in 2019?

13 A Yes, that's right.

14 Q Now, during the interview, did Mr. Hovan
15 state his age?

16 A I'm not sure. I thought he did, but when I
17 went back, I think he may have been talking about a
18 couple of other people.

19 Q Okay. Then I want to ask you a couple of
20 questions about the interview.

21 So, during the interview, did Mr. Hovan point you
22 to any evidence?

23 A Yes, he did.

24 Q Can you explain what happened?

25 A Sure. There were several times throughout

1 the interview where he referenced communications he
2 had had with some of the other people involved in the
3 oil deal, and he specifically mentioned WhatsApp
4 communications and other types of chats that he had
5 had.

6 Q And were some of those instances where he
7 mentioned those unsolicited?

8 A Yes.

9 Q And at some point in time -- well, I think
10 you already testified -- at some point in time did the
11 topic of his telephones come up directly?

12 A Yes, it did.

13 Q And what happened?

14 A I had asked him a very open-ended question
15 and he had started discussing his involvement in the
16 conspiracy, and then he offered of his own accord that
17 we could have at looking at WhatsApp communications
18 and things like that, and indicated that he would
19 point us to every single conversation that he has ever
20 had.

21 Q And after that point in time, what did you
22 do?

23 A So at that point he had provided verbal
24 consent, so we followed up by asking whether or not
25 his phones had passcodes to determine if we would need

1 that to get into the phone, and then followed up with
2 going through a written consent form with Mr. Hovan to
3 confirm his verbal consent.

4 Q And I'm going to ask you to look at, please,
5 in your exhibit binder Exhibit 3 there, do you see
6 that?

7 A Yes, I do.

8 Q Are you familiar with that document?

9 A Yes, I am.

10 Q And what is that?

11 A This is a standard FD-26, FBI consent-to-
12 search form.

13 Q And were you present when this was executed
14 by Mr. Hovan?

15 A Yes.

16 Q And did he have an opportunity to read this?

17 A He did.

18 Q Okay. And is there any reason that you have
19 from participating in this interview to think that the
20 consent here wasn't knowing and voluntary?

21 A No, not at all. He was following Agent
22 Jackson. He actually corrected him because he was
23 watching what he was writing in terms of the passcode.

24 Q Okay. And at this point in time had there
25 been any mention of a search warrant during the

1 interview?

2 A No.

3 Q And was there any mention afterwards?

4 A No.

5 Q Now I'm going to ask you to listen to two of
6 the clips on this recording, the first one is going to
7 be 1-10.

8 MR. MURRAY: Your Honor?

9 THE COURT: What page is this?

10 MR. MURRAY: This starts -- this is the
11 one that starts on page 21.

12 THE COURT: That's in Exhibit 1B,
13 right?

14 MR. MURRAY: It's in 1B, yes, Your
15 Honor, it's on page 21.

16 THE COURT: All right.

17 MR. MURRAY: I'll wait until Your Honor
18 gets to that page.

19 THE COURT: That would be nice.

20 (Pause)

21 MR. MURRAY: We're going to start, Your
22 Honor, at line 23.

23 THE COURT: Okay.

24 BY MR. MURRAY:

25 Q So starting at line 23, is this where you

1 asked the open-ended question?

2 A Yes, it is.

3 Q I'm going to play it for a little bit and
4 then ask you some questions a little further on.

5 Okay?

6 A Okay.

7 MR. MURRAY: If you could start it,
8 please?

9 (Begin playing audio clip G-1-10:)

10 "AGENT FEAR: Anything else that we
11 haven't asked you that would be helpful for us to know
12 about this deal or these people?

13 "MR. HOVAN: Like I said, I -- the -- I
14 knew everybody, like I've kind of met everyone in that
15 room by name except for the one person, that's the
16 other investor, I never met him before, but other than
17 that, like, I don't -- I don't really know how much
18 more I know of, that's -- like I said, I don't really
19 know that much. You'll probably get a lot more
20 information from the other people in the room, but
21 like I'll answer any question that I can answer or
22 anything like that I can try and answer. Like I said,
23 I've got to tell the truth and I'm not going to -- I'm
24 not going to lie to you to try and help my case out
25 any, but all I can do is tell you the truth of my

1 involvement and what I know from involvement of the
2 other people. And, like I said, like have at looking
3 at WhatsApp conversations and things like that because
4 they're fair game for -- I mean, you're going to look
5 at them anyway probably, but I'll point you to the
6 ones -- I'll point you to every single conversation
7 I've ever had.

8 "AGENT JACKSON: Right."

9 BY MR. MURRAY:

10 Q So at that point, at the start of that
11 section, what did you ask him?

12 A I asked him if -- do you want me to read it
13 verbatim or summarize?

14 Q Just summarize it.

15 A I just asked him in general if there was
16 anything else that we -- it would be helpful for us to
17 know.

18 Q And why were you doing it at that point?

19 A Because we were nearing the end of the
20 interview and I wanted to make sure there wasn't
21 something else that Agent Jackson and I should be
22 asking about that, you know, not being the lead agents
23 on this case, perhaps we didn't know and that he would
24 have additional information for us.

25 Q And when he provided the answer, what did he

1 end up offering to you?

2 A He provided consent to search his phones.

3 Q And was that oral consent?

4 THE COURT: I didn't hear that, the
5 answer.

6 THE WITNESS: He provided consent to
7 search his phones.

8 BY MR. MURRAY:

9 Q And was that oral consent at first?

10 A Yes, it was verbal/oral consent.

11 Q And did he subsequently provide written
12 consent?

13 A Yes, he did.

14 Q And at that point in time, again, had there
15 been any mention of a search warrant?

16 A No.

17 Q Or any other means that the case agents
18 might be using to obtain communications on those
19 phones?

20 A No.

21 Q And in addition, at that same time, did he
22 offer to point anything out to you?

23 A Yes, he offered to point out every single
24 conversation he'd ever had.

25 MR. MURRAY: Could you proceed, please?

1 (Begin playing audio clip G-1-10:)

2 "MR. HOVAN: Yes, I personally -- like
3 I don't think anything really hurts my case because
4 like I -- like I said, I pointed two parties together
5 and I should have just backed out when I first got the
6 call to be involved in something like this."

7 THE COURT: And where is this?

8 MR. MURRAY: Can you stop, please?

9 This is on page 22, Your Honor, and
10 we're starting at line 14 now.

11 BY MR. MURRAY:

12 Q On line 14, after he has provided this oral
13 consent, do you pose a question?

14 A Yes, I do.

15 Q Is this the question about the passcodes?

16 A Yes.

17 Q And why are you doing that?

18 A I'm just asking him if his phones have
19 passcodes because, if they did, I would ask him to
20 provide them so that we could get in, if he wanted to
21 continue with his consent.

22 Q And at that point were you asking about the
23 passcodes because you understood he had already
24 provided oral consent and expressed a willingness to
25 let you check those phones?

1 A Yes.

2 Q And there were two phones in question?

3 A Yes, there were.

4 Q And does he begin to talk about the
5 passwords on those two phones?

6 A Yes, that's right.

7 Q And when he talks about that, do you make a
8 follow-up question or comment relating to those
9 passcodes?

10 A Yes, I do. So he indicates we -- I ask him
11 about passcodes and he indicates that his work phone
12 does have a passcode, and then tells me that there's
13 nothing on that, but that I can still look at it, you
14 know. And I then indicate, basically agree with him
15 that we would still want to look at both phones
16 regardless, that we wouldn't just want to take his
17 word that there was nothing on it, that we would want
18 to check on it as well.

19 MR. MURRAY: Could you proceed?

20 (Begin playing audio clip G-1-10:)

21 "AGENT FEAR: Yeah, uh, do your phones,
22 do they have passcodes?

23 "MR. HOVAN: My iPhone does, but that's
24 my work phone, there's nothing on there."

25 THE COURT: Is this the same -- is this

1 proceeding on page --

2 MR. MURRAY: Yes, it is, Your Honor.

3 If you could go back, please, to line
4 14, the line that says, "Yeah, uh, do your phones, do
5 they have passcodes?" That's the beginning of this.
6 That's on line 14 of page 22, Your Honor.

7 Go ahead, please.

8 (Begin playing audio clip G-1-10:)

9 "AGENT FEAR: Yeah, uh, do your phones,
10 do they have passcodes?"

11 THE COURT: You're familiar -- you
12 know, familiar with the transcript, I'm not. So
13 that's why --

14 MR. MURRAY: Of course.

15 THE COURT: -- you have to make sure
16 that I know exactly where you're reading from.

17 MR. MURRAY: I appreciate it, Your
18 Honor, and I know when I stop to ask a question I
19 should repeat the line at the next --

20 THE COURT: Yeah, that's a good idea.

21 MR. MURRAY: Yes. So, Your Honor,
22 we're starting at page 22, line 14.

23 THE COURT: All right.

24 (Begin playing audio clip G-1-10:)

25 "AGENT FEAR: Yeah, uh, do your phones,

1 do they have passcodes?

2 "MR. HOVAN: My iPhone does, but that's
3 my work phone, there's nothing on there. I mean, you
4 can look at it, but there's nothing on there.

5 "AGENT FEAR: Okay. Yeah, I mean,
6 we're going to look at the phones regardless and it's
7 usually just easier to --

8 "MR. HOVAN: Yeah, I don't know -- I
9 actually don't know these iPhones well. Like I could
10 just open it with my face and you can -- you can turn
11 off the passcode, if you want, there's no passcodes.

12 "AGENT JACKSON: Okay. So what we're
13 going to do is I'm going to have you -- if you're good
14 with this" --

15 MR. MURRAY: Can you stop right there?

16 BY MR. MURRAY:

17 Q So focusing in on line 19 where -- and line
18 20 of this transcript, you're making a statement
19 there, correct, and it's cut off by Mr. Hovan?

20 A Yes.

21 Q And what was it that you were trying to say
22 at that point in time?

23 A Well, like I had mentioned before, we're
24 talking about passcodes and he's indicating that there
25 is a passcode on his work phone. He then follows up

1 by saying that there's nothing on his work phone, but
2 that we can still look at it. So I'm indicating that,
3 yes, we would still want to look at it regardless just
4 to check it, basically.

5 Q So at that point in time were you trying to
6 tell him you were going to search the phone regardless
7 of whether he consent?

8 A No, I was not.

9 Q Now could we go back just a little bit to
10 line 29? Is this the portion in which Mr. Jackson,
11 after you've addressed the passcodes, begins to talk
12 about the consent form?

13 A Yes, it is.

14 Q Okay.

15 MR. MURRAY: And would you proceed?

16 (Begin playing audio clip G-1-10:)

17 "AGENT JACKSON: With us looking
18 through your phones, I'm going to have you sign a
19 consent form.

20 "MR. HOVAN: Okay.

21 "AGENT JACKSON: Okay?

22 "MR. HOVAN: Yeah.

23 "AGENT JACKSON: All right. So this is

24 a" --

25 MR. MURRAY: If we could stop there?

1 BY MR. MURRAY:

2 Q What happens with respect to the consent
3 form?

4 A At this point, Agent Jackson has pulled out
5 a consent-to-search form and is showing Mr. Hovan
6 that, if you're okay with this, we'll fill out this
7 consent form, and ensures that Mr. Hovan does agree
8 with it.

9 Q So in line 34, does Agent Jackson ask him if
10 he's okay?

11 A Yes, he does.

12 Q And what does Mr. Hovan say?

13 A "Yeah."

14 Q And is that in line 36?

15 A Yes, it is. Line 36, Mr. Hovan says,
16 "Yeah."

17 MR. MURRAY: If you could go on,
18 please? So we're starting around line 37.

19 (Begin playing audio clip G-1-10:)

20 "AGENT JACKSON: So this is a iPhone,
21 this is your work phone, right?

22 "MR. HOVAN: Yeah.

23 "AGENT JACKSON: Okay. What type of
24 iPhone is it?

25 "MR. HOVAN: iPhone X.

1 "AGENT JACKSON: And is that the PIN
2 associated with it?

3 "MR. HOVAN: Yeah. It's 0510 H-O -- H
4 --

5 "AGENT JACKSON: I'm sorry, I'm sorry,
6 it's 0510?

7 "MR. HOVAN: 10, it's my birthday, and
8 then H-O-V-A, lowercase.

9 "AGENT JACKSON: All right. All
10 lowercase?

11 "MR. HOVAN: Yeah. There's no password
12 on the other phone."

13 MR. MURRAY: Can you stop there?

14 BY MR. MURRAY:

15 Q What's happening there?

16 A So Agent Jackson is completing the consent-
17 to-search form, he's filling it out with Mr. Hovan's
18 help. So he's actually writing on the form the phone
19 and then the passcode. And in this particular
20 instance Agent Jackson starts writing -- so the
21 passcode is 0510hova, so Agent Jackson writes 0510 and
22 H-O-V-A in all capital letters, Mr. Hovan corrects him
23 and says lowercase. So Agent Jackson crosses that out
24 and writes "hova," lowercase. So they're working on
25 completing the consent form together.

1 Q Okay. And at that point in time is the
2 consent form near enough to Mr. Hovan that he's able
3 to see generally what Agent Jackson is doing?

4 A Yes. Like I said, he was tracking what
5 Agent Jackson was doing because he saw what he was
6 writing and he corrected it. Agent Jackson is sitting
7 right next to him as he fills it out.

8 MR. MURRAY: Can you please proceed?

9 (Begin playing audio clip G-1-10:)

10 "AGENT JACKSON: 0510hova?

11 "MR. HOVAN: Uh-huh.

12 "AGENT JACKSON: Okay. This is your
13 work phone?

14 "MR. HOVAN: Yep.

15 "AGENT JACKSON: All right. And the
16 other one?

17 "MR. HOVAN: There's no password.

18 "AGENT JACKSON: I mean what kind of
19 phone?

20 "MR. HOVAN: Note 9.

21 "AGENT JACKSON: Okay. Is it HTC,
22 Samsung? What --

23 "MR. HOVAN: Samsung, Samsung.

24 "AGENT JACKSON: Okay.

25 "MR. HOVAN: Nobody has HTC phones

1 anymore.

2 "AGENT JACKSON: That's why I was like,
3 damn, I don't even see --

4 "MR. HOVAN: No. I worked for AT&T --

5 "AGENT JACKSON: -- HTC --

6 "MR. HOVAN: -- I worked for AT&T.

7 "AGENT JACKSON: Yeah, went straight
8 old school. All right.

9 "MR. HOVAN: I used to have an HTC,
10 it's very good phones.

11 "AGENT JACKSON: Yeah. All right, so
12 the Samsung doesn't have -- no password on it?

13 "MR. HOVAN: No password.

14 "AGENT JACKSON: Okay.

15 "MR. HOVAN: And do you want me -- I
16 can show you -- I can point you to all the WhatsApp
17 conversations that are prevalent (sic) to you --

18 "AGENT FEAR: Sure, that would help
19 out.

20 "MR. HOVAN: -- I can save you time.
21 And you can look -- feel free to look through
22 everything, but I'll show you the more important ones.

23 "AGENT FEAR: Okay."

24 BY MR. MURRAY:

25 Q Right there from lines 18 to lines 24, what

1 is Mr. Hovan offering?

2 A Again, he's offering to point out the
3 specific conversations that he feels like might be
4 most relevant to us and at the same time he's offering
5 for us to look through everything.

6 Q Is he expressing any reticence here?

7 A He is not.

8 Q At this point in time, have you made any
9 threats or promises to him?

10 A No, not at all.

11 Q And is this consistent with many of his
12 other offers throughout the beginning and later on in
13 this meeting?

14 A Yes, it is.

15 MR. MURRAY: Please proceed.

16 (Begin playing audio clip G-1-10:)

17 "AGENT JACKSON: So this one is the
18 password for the iPhone X. Can you get to it through
19 -- if you can't use your face, can you just put the
20 passcode and you still --

21 "MR. HOVAN: It should work, I think.
22 I mean, let me -- I think if you just do it a couple
23 times, it should, but let me just turn off the
24 password. I think this probably will work. And, like
25 I said, there's nothing on there -- oh, shit.

1 "AGENT JACKSON: What's that?

2 "MR. HOVAN: The password didn't work.

3 "AGENT FEAR: I think it's just not
4 taking the zero.

5 "MR. HOVAN: Yeah. Okay."

6 MR. MURRAY: So can you stop it just --
7 there's a lot of pauses here, Agent Fear, I'll let you
8 --

9 THE WITNESS: I apologize.

10 MR. MURRAY: I'll do it at the moment
11 that you get your water.

12 THE WITNESS: I'm sorry.

13 MR. MURRAY: No, not at all. Please do
14 that.

15 BY MR. MURRAY:

16 Q There's a lot of pauses here, what's going
17 on in the transcript at this time?

18 A So what's happening is, Agent Jackson is
19 trying to write down the passcodes on the consent-to-
20 search form and Mr. Hovan is trying to confirm that he
21 has the right passcode and then tried to turn it off,
22 and he's just having trouble, as he mentioned earlier
23 -- or it might have been -- it might be later, I think
24 he's about to mention that he's not great with
25 iPhones. So he's just struggling to figure out how to

1 turn it off.

2 Q And why is it important to turn off the
3 passcodes here?

4 A In order for him to be able to show us the
5 different communications and for us to look through
6 the phone.

7 Q And if the passcodes remain on the phone,
8 might that also be problematic for the FBI in the
9 future to get back in the phone?

10 A Yes.

11 Q So if the passwords are turned off, the FBI
12 then can proceed with searches in the future?

13 A Yes, that's right.

14 Q And was that being contemplated at the time
15 as this consent-to-search form was being prepared? In
16 the sense of, was Mr. Hovan -- was a form being filled
17 out to allow the FBI to search the phone both at this
18 meeting, but into the future?

19 A Yes, it was. Yes, that's correct.

20 Q And removing the passwords from the phone
21 would facilitate that, correct?

22 A That's correct.

23 MR. MURRAY: Please proceed.

24 THE COURT: On page 25, is that where
25 you're going?

1 MR. MURRAY: Yes. I'm trying to find
2 it myself, Your Honor, so thank you. We're on page
3 25, line 1.

4 THE COURT: Where he says he's not good
5 with iPhones?

6 MR. MURRAY: I think it's going to be
7 -- yes, exactly. Thank you.

8 (Begin playing audio clip G-1-10:)

9 "AGENT FEAR: Yeah, it's confusing,
10 these newer --

11 "MR. HOVAN: It's all" --

12 MR. MURRAY: So we're going to start at
13 -- how about --

14 (Begin playing audio clip G-1-10:)

15 "MR. HOVAN: Do you know how to turn
16 that off?

17 "AGENT FEAR: I can turn it off.

18 "MR. HOVAN: Yeah."

19 MR. MURRAY: Why don't we -- just to
20 make it easier, Your Honor, because I want to make
21 sure -- could we pick up at line 40 on page 24? So
22 that starts with, "The passwords didn't work."
23 Because I think I might have been talking over the end
24 of it.

25 (Begin playing audio clip G-1-10:)

1 "MR. HOVAN: The password didn't work.

2 "AGENT FEAR: I think it's just not
3 taking the zero.

4 "MR. HOVAN: Yeah. Okay. I'm not good
5 with iPhones.

6 "AGENT FEAR: Yeah, it's confusing
7 these newer --

8 "MR. HOVAN: Cancel -- do you know how
9 to turn it off?

10 "AGENT FEAR: Yeah, I can turn it off.

11 "MR. HOVAN: Yeah.

12 "AGENT FEAR: Let's see.

13 "MR. HOVAN: But, like I said, I never
14 did anything with me work phone, so you can look at
15 it.

16 "AGENT JACKSON: Okay.

17 "AGENT FEAR: Is that your --

18 "MR. HOVAN: I'm not going to get that
19 back for a long -- I'm not getting that back for a
20 while, I know.

21 "AGENT FEAR: I think it might be off.
22 Let's try it.

23 "AGENT JACKSON: Possibly not -- I
24 mean, I don't know. It depends on what they find on
25 there, but they don't, you know -- so I couldn't

1 really say. I don't want to give you a date --

2 "AGENT FEAR: It's not off.

3 "AGENT JACKSON: -- you know

4 "MR. HOVAN: Uh --

5 "AGENT FEAR: (Indiscernible) say it
6 again.

7 "MR. HOVAN: I'm still being recorded,
8 yeah?

9 "AGENT JACKSON: Yes.

10 "MR. HOVAN: So what are the next
11 steps? I guess I can answer past that or --

12 "AGENT JACKSON: Yeah. Well, let me
13 get to this real quick. If -- okay --

14 "AGENT FEAR: We're still trying to
15 turn this off, but, I mean, the passcode works. We
16 should be fine.

17 "AGENT JACKSON: Your signature, date.

18 "MR. HOVAN: It's the 10th?

19 "AGENT JACKSON: Yes, 2/10/20. Thank
20 you.

21 "AGENT FEAR: You're right, it's not
22 letting you -- but you gave us -- so for right now
23 that should be fine."

24 BY MR. MURRAY:

25 Q So, Agent Fear, on page 26, the top of the

1 page where they're talking about the 10th and February
2 10th, 2020, what is happening there?

3 A They are finalizing the consent form. Mr.
4 Hovan is given the opportunity to review it and then
5 he's signing it.

6 Q And we hear some scratching, is that a
7 signature of the consent form?

8 A Yes. So that would be both Mr. Hovan
9 signing it and Agent Jackson signing it.

10 MR. MURRAY: So then, Your Honor, I
11 have one more clip I'd like to play. We have not
12 listened to this yet. This begins on page 26 at line
13 39.

14 BY MR. MURRAY:

15 Q Do you recall, Agent Fear, after -- about
16 20, 30 seconds after the signature of the form, what
17 happens in this next clip?

18 A Mr. Hovan starts walking me through and
19 showing me the different WhatsApp communications, the
20 chats and the groups, and identifying the different
21 people and their phone numbers.

22 Q But at this point he's provided consent to
23 you to search the phones, correct?

24 A Yes.

25 Q He's provided oral consent?

1 A Yes.

2 Q And written consent?

3 A Yes.

4 MR. MURRAY: So, Your Honor, starting
5 on page 26 at line 40, please.

6 UNIDENTIFIED SPEAKER: What page?

7 MR. MURRAY: Oh, sorry, 1-11.

8 THE COURT: Page what, 40?

9 MR. MURRAY: 26 at 40 is the last one.

10 THE COURT: Oh.

11 (Begin playing audio clip G-1-11:)

12 "MR. HOVAN: Ravi (ph), Nicky Fuchs,
13 Swiss Specialists --

14 "AGENT FEAR: What is Swiss
15 Specialists?

16 "MR. HOVAN: This is just -- it's the
17 same people like Nicky. You can go in here, you'll
18 see everyone that's in the chats. Ravi
19 (indiscernible) Nick. That's Rob that's Bill.

20 "AGENT FEAR: 407" --

21 THE COURT: Are you sure that's the
22 right number?

23 MR. MURRAY: Let me make sure, I'm not
24 -- page 26 at line 40.

25 THE COURT: All right, one second.

1 THE WITNESS: I think it starts at the
2 -- at --

3 THE COURT: Okay, that's a film, that's
4 a fun photo, is that the one that --

5 MR. MURRAY: I think it -- oh, so this
6 might be the person that was helping me cut off the
7 first few lines of this. So it starts later down on
8 line 40 where -- or actually it starts on line 41. So
9 I gave you the wrong thing. On line 41 on page 26.

10 THE COURT: "I know we have so much
11 fun"?

12 MR. MURRAY: Right below that, 41.
13 There's a transition in topics. So before that Mr.
14 Hovan is talking about his wife, yeah. I'm not asking
15 about that, as it's not relevant to consent. On the
16 line below it says, "Ravi, Nicky Fuchs, Swiss
17 Specialists."

18 THE COURT: I don't see it. On page
19 26?

20 MR. MURRAY: 26 at line 41.

21 THE COURT: It says, "I know, so I'm
22 going to break her heart, it's so sad." And, "Ravi,
23 Nicky Fuchs" --

24 MR. MURRAY: Yeah.

25 THE COURT: -- "Swiss" -- that's the

1 line?

2 MR. MURRAY: It's the "Ravi" there. So
3 there's a break in the conversation.

4 BY MR. MURRAY:

5 Q So, Agent Fear, Swiss Specialists, what is
6 that? When you're looking at the phone, what --
7 that's not an individual, right?

8 A I believe that was the name of a group chat.
9 So then when you go into that chat, there's different
10 contacts within it.

11 Q So for example, if you want to chat about a
12 particular topic, you can name that chat, is that
13 right?

14 A Yes, that's right.

15 Q And then different people can participate,
16 is that right?

17 A That's right.

18 Q So is Mr. Hovan going through different
19 named chats and listing to you the relevant ones and
20 the people who participated in them?

21 A Yes. Some of the chats that he pointed out
22 were just -- I believe were just between him and
23 another individual and at other times it was chats
24 where it had a specific name, like what you're
25 mentioning, and there were multiple participants in

1 those chats.

2 Q So he was identifying to you not just the
3 names of individuals that you'd be interested in, but
4 particular chats that had been named so that you could
5 know to go in those?

6 A Yes, that's right.

7 MR. MURRAY: If you could proceed
8 again? We're starting at line 41 on page 26, Your
9 Honor.

10 (Begin playing audio clip G-1-11:)

11 "MR. HOVAN: Ravi, Nicky Fuchs, Swiss
12 Specialists.

13 "AGENT FEAR: What's Swiss Specialists?

14 "MR. HOVAN: This is just -- it's the
15 same people like Nicky. You can go in here, you'll
16 see everyone that's in the chats. Ravi, Al, Nick --
17 that's Rob, that's Bill.

18 "AGENT FEAR: 407 is Rob?

19 "MR. HOVAN: Uh-huh. 917 is Bill.

20 "AGENT FEAR: 917 is Bill. Is that --

21 "MR. HOVAN: 347 is Anthony. I met him
22 for the first time today. He was -- I never really
23 talked to him directly, I know Nick was. He was the
24 one that was helping everyone set up like passwords,
25 things like that, I think.

1 "AGENT JACKSON: Okay.

2 "MR. HOVAN: I know that Rob set up
3 like an Antigua password, I think. I didn't do any of
4 that stuff. That's Rob. 'Has anyone ever seen my
5 phone?'

6 "AGENT FEAR: That's Rob, it's 407" --

7 MR. MURRAY: Can you stop there,
8 please?

9 BY MR. MURRAY:

10 Q So, just for the record, you mentioned
11 earlier that there was one portion of this transcript
12 that you thought was inaccurate, is that right?

13 A Yes.

14 Q Is that in page 27, line 22?

15 A Yes. The part where he says "Has anyone
16 ever seen" -- it's hard to make out. He might be
17 saying something like "that's the only one I see in my
18 phone." I'm not entirely sure. That's the only part
19 that I believe I hear differently than what's
20 transcribed.

21 Q So the words "Has anyone ever seen" you
22 think are not accurate, right?

23 A Yes.

24 Q You don't hear that and it doesn't make
25 sense in the context, right?

1 A Right.

2 Q Because you're all looking at his phone, so
3 Mr. Hovan wouldn't be asking has anyone ever seen my
4 phone?

5 A Right.

6 Q So, with that correction, you believe the
7 rest of the transcript is accurate, is that right?

8 A Yes.

9 MR. MURRAY: If we could proceed,
10 please.

11 (Begin playing audio clip G-1-11:)

12 "AGENT FEAR: 222-8267 --

13 "MR. HOVAN: Yeah.

14 "AGENT FEAR: -- is also him?

15 "MR. HOVAN: Yeah.

16 "AGENT FEAR: Okay.

17 "MR. HOVAN: This is Management Company
18 and this is -- who's in there? They're all pretty
19 much the same people, it's just the same, because this
20 is Ravi, Hal, Nick, Rob, and Bill. And 347 is -- I
21 think this is the -- I think that's the guy that's --

22 "AGENT FEAR: 347-534-73 --

23 "MR. HOVAN: I think he's the guy --

24 "AGENT FEAR: -- 52.

25 "MR. HOVAN: -- the specialist guy, I

1 just met him today, I think his name is Anthony. He
2 was like the financial accountant or something.

3 "AGENT FEAR: Okay.

4 "MR. HOVAN: And that's -- oh, yeah,
5 and then there's this one. This hasn't been on in a
6 while, Philly Investors. And this is Nicky, me, Ravi,
7 Hal, and Jason was on there."

8 BY MR. MURRAY:

9 Q So on page 27, line 34, it mentions
10 Management Company, is that the name of another one of
11 these group chats that Mr. Hovan has directed you to?

12 A Yes.

13 Q And then on page 28, line 6 to 7, Philly
14 Investors, is that yet another one of these group
15 chats to which he's directed you to?

16 A Yes.

17 Q Now, after this, did Mr. Hovan -- after he
18 provided this consent orally and in writing, did he
19 ever withdraw it?

20 A No, he did not.

21 Q Did he ever express concerns about the
22 consent or your searching through the phones before or
23 after this?

24 A No. In fact, one of the last things he said
25 or towards the end he again reiterated, if there was

1 anything he could do to help us, he would be a
2 witness; he wanted to help.

3 Q And were you ever concerned or given any
4 reason to think that his consent wasn't voluntary and
5 free during this interview?

6 A No, I was not.

7 MR. MURRAY: No further questions, Your
8 Honor.

9 THE COURT: Okay. Any cross-
10 examination? Is it going to be the same length? I
11 just am trying to --

12 MR. FAYHEE: I'm going to be very
13 swift, Your Honor.

14 THE COURT: Oh, are you? Go ahead.

15 MR. FAYHEE: I'm going to show you that
16 I can be long-winded and short too, I hope. We'll
17 see.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. FAYHEE:

21 Q Good afternoon, Special Agent Fear. My name
22 is Ryan Fayhee, I represent Mr. Hovan.

23 A Good afternoon.

24 Q So, as I just mentioned to the Judge, I'm
25 going to try to move through a little bit swiftly here

1 and try to just focus on a couple of points. And you
2 have a binder in front of you still there that I may
3 refer to from time to time.

4 A Okay.

5 Q So just to make sure I heard correctly. So
6 are you or were you, February 10, 2020, the day of the
7 arrest, were you assigned to this investigation or
8 were you just helping out on the day of the arrest and
9 the interview of Mr. Hovan?

10 A I was just helping out on the day of the
11 arrest.

12 Q And are you assigned to the same squad that
13 was managing this investigation?

14 A One of the squads, yes.

15 Q One of the squads, but not -- you weren't
16 assigned to the investigation other than for the
17 purposes of this arrest and the interview?

18 A That's correct.

19 Q Got it, okay. And so on the day of the
20 arrest, I'm talking about the arrest itself, which we
21 understand took place at the Hotel Monaco, how would
22 you describe your role at that arrest? What was your
23 job at that time?

24 A My job at that time was to be one of the
25 agents who went into the room to ensure that everyone

1 was arrested safely. So I was tasked with filing in
2 and making sure that, you know, as we came up to two
3 people, that we would make sure that they were in a
4 safe position, that they were taken into custody, and
5 that they did not have any weapons on them.

6 Q Okay. And so were you assigned to place
7 under arrest a specific person or just there generally
8 to ensure safety, just to make sure I understand?

9 A So when we execute an arrest like that, it's
10 too big. So I was assigned that day to interview and
11 transport and process and book Mr. Hovan.

12 Q Okay.

13 A But going into a room, there's too many
14 people. So my task was not you are to find Mr. Hovan
15 and arrest him specifically, it was to assist on
16 executing the arrest on everyone in that room. So I
17 did not specifically go to Mr. Hovan, I went to the
18 most logical person in that room at the time.

19 Q And who was that?

20 A I don't know, honestly.

21 Q Oh, you don't remember? Okay, fair enough.
22 That's all right.

23 In terms of how you prepared for the day of the
24 arrest -- now, I understand it's typical to have sort
25 of a safety briefing the day of and I'm a little less

1 interested in the safety briefing itself, I was more
2 interested in what steps you would have taken to
3 prepare, say, for the interview of Mr. Hovan or to
4 prepare for the arrest more substantively?

5 A Sure. I mean, we were giving a brief
6 overview of the case and provided with a sense of the
7 types of questions and a piece of paper that had some
8 general questions and some names on it to go over with
9 Mr. Hovan.

10 Q Okay. So, if I understand correctly, there
11 was an oral briefing that was provided, was that -- is
12 that correct?

13 A Yes, that's right.

14 Q And was that the day of the arrest or
15 earlier, if you can recall?

16 A I believe it was the day of the arrest.

17 Q Okay. And you had been provided some
18 packet, a set of papers that was intended to help you
19 prepare for the interview of Mr. Hovan or at least to
20 make use of in the course of the interview with Mr.
21 Hovan?

22 A Yes, that's right.

23 Q Okay. And who provided you that
24 information?

25 A One of the case agents.

1 Q Okay. And one of the case agents assigned
2 specifically to the case or somebody else?

3 A One of the case agents assigned to the case,
4 yes.

5 Q But you don't remember who specifically that
6 was?

7 A I mean, I don't know who handed us the
8 packet, but both agents involved conducted the
9 briefing.

10 Q Do you know who drafted the packet?

11 A I do not, no.

12 Q Okay. So it's assigned to your squad, your
13 squad is preparing and participating in the arrest,
14 but you don't know who drafted the packet that's being
15 handed off to you?

16 A Not specifically. They could have worked on
17 it together. You know, typically, they're working
18 together. They might assign different tasks to
19 different people, but they likely both reviewed it.

20 Q Okay. And do you remember who performed the
21 oral briefing the day of?

22 A I don't remember specifically if both agents
23 spoke, I don't know.

24 Q Is it typical to have two case agents sort
25 of assigned as their case as being the lead case

1 agents?

2 A A lot of times there's multiple, but there's
3 a lot of -- but not always, it depends.

4 Q In this case, who were the two lead case
5 agents?

6 A The two lead case agents were Agent Andrew
7 Torno and Agent John Chris Vacanti.

8 Q Okay, okay. And who is it -- well, I'll
9 just move along. That's helpful.

10 And so for the purposes of the arrest, when you
11 arrived, you made the statement, I think -- I heard
12 two statements earlier. One was, in your direct
13 examination you said, "We interrupted a meeting," do
14 you remember that --

15 A Uh-huh.

16 Q -- when you said that? And the second one I
17 heard, it was on cross here, that you filed in the
18 room, do you remember that one?

19 A I don't know if I said filed, but I may
20 have. That's what we did --

21 Q Okay.

22 A -- that's how I would describe it.

23 Q That's all right. Yeah, no, I won't focus
24 on it. So in terms of interrupted a meeting, I wanted
25 to talk a little bit more about that.

1 Now, you understand, don't you, that this was an
2 FBI undercover operation, correct?

3 A Yes, I knew that.

4 Q Right. And so, in other words, it had been
5 the FBI that had arranged this meeting at the hotel,
6 is that correct?

7 MR. MURRAY: Objection, that's a fact
8 not in evidence.

9 THE COURT: What's -- what are you
10 trying to --

11 MR. FAYHEE: I'm simply cross-
12 examining. She said she interrupted a meeting. I
13 think it's a very highly relevant fact that the FBI
14 had absolute control over the meeting that she's
15 interrupted. It was set up for the purposes of this
16 arrest and I'm interested in the circumstances in
17 which Mr. Hovan was placed under arrest, and taken and
18 interviewed by Special Agent Fear.

19 THE COURT: All right, I'll allow that.

20 MR. MURRAY: Well, and I guess, Your
21 Honor, then I don't see its relevance as to why or who
22 set up this meeting, you know. The facts of the --
23 you know, the facts of the agents coming in seems
24 relevant, but how it all came about and getting into
25 what was going on in the investigation behind it --

1 THE COURT: Well, I don't think he's
2 going to do that.

3 MR. FAYHEE: No, I had no interest in
4 it --

5 THE COURT: I'm not going to allow you
6 do it, so --

7 MR. FAYHEE: Fair enough, Your Honor.
8 I think it will sound familiar to you because it is
9 the same line of questioning I asked Special Agent
10 Jackson without objection.

11 BY MR. FAYHEE:

12 Q So the question was, you had an
13 understanding at the time that you, quote,
14 "interrupted a meeting," that this was a meeting that
15 the FBI undercover platform had set up involving Mr.
16 Hovan?

17 A No, I did not know that.

18 Q Okay.

19 A I was not a lead case agent, I don't know
20 the facts, but I do know that there were several
21 people there that we were going to arrest that day.

22 Q Okay. You knew the people were going to be
23 there for the purposes of the arrest?

24 A I knew that was -- I knew that people were
25 going to be at that meeting and that that was where we

1 were going to execute the arrest.

2 Q Okay. Were there FBI agents in the room
3 acting in an undercover capacity at the time of the
4 arrest?

5 A As I mentioned, I know this was an
6 undercover operation.

7 Q Right, we've established that. My question
8 is, were there FBI agents in the room acting in an
9 undercover capacity at the time of the arrest?

10 A Yes, there were.

11 Q Okay. And then there were also defendants
12 or would be defendants who were charged in the case,
13 including Mr. Hovan?

14 A Yes, that's correct.

15 Q How many, if you can recall, persons were
16 arrested that day? We can count Mr. Hovan, if you
17 like, as part of them, but how many were arrested?

18 A I honestly don't remember. It wasn't my
19 case. I was given my -- you know, my task. I don't
20 remember, I don't know.

21 Q So you were briefed on that morning for the
22 purposes of ensuring the safety of the room, but you
23 don't know how many people would be arrested?

24 A We were supposed to go in and make sure that
25 we maintained the security and safety of everyone.

1 Everyone was to be placed in handcuffs and then at
2 that point, for transport, my task was to transport
3 Mr. Hovan.

4 Q Okay. But you don't know how many people
5 were arrested that day?

6 A I don't recall the specific number, I'm
7 sorry.

8 Q Okay. Do you know whether it was more than
9 five or less than five?

10 A It might have been about four or five. I
11 don't know, I'm sorry.

12 Q And do you remember how many other people in
13 the room who were not arrested, how many other people?
14 So I can get a sense of how many people totally are in
15 the room?

16 A I don't know, I don't remember.

17 Q More than five, less than five?

18 A I don't know. I wasn't involved in the
19 specifics of their undercover operation.

20 Q Okay.

21 A I was helping out that day.

22 Q Did you get a briefing -- given that we've
23 established it's an FBI undercover operation, did you
24 get a briefing of where people would be positioned
25 within the room prior to coming to effectuate the

1 arrest?

2 A No, not that I recall. I don't think we had
3 any of those specifics.

4 Q Did you know whether the FBI agents who were
5 running the undercover would be in the room before the
6 defendants?

7 A I'm not sure. I don't remember how -- I
8 don't really know the specifics of how the meeting was
9 supposed to be set up.

10 Q Okay. And so when you ultimately came
11 through the door -- do you remember how many agents
12 effectuated the arrest?

13 A I don't.

14 Q Okay. So you don't remember how many
15 defendants were there, you don't remember how many FBI
16 agents were in the room, correct?

17 A Correct.

18 Q Do you know whether there were any
19 confidential human sources in the room at the time of
20 the arrest?

21 A I believe there was.

22 Q Okay. How many?

23 A I don't know that I'm at liberty to speak
24 about that.

25 Q I'm not asking you what the identity of the

1 confidential human source is, I'm asking whether there
2 were any in there and how many.

3 MR. MURRAY: Objection, Your Honor. I
4 don't see how any of this is relevant. We're trying
5 not to get in the way of Mr. Fayhee's cross-
6 examination here, but this is --

7 THE COURT: What are you trying to
8 show?

9 MR. FAYHEE: Well, Your Honor, the
10 Agent has displayed a near-photographic memory of the
11 transcript of the interview, I'm simply asking her
12 questions about the arrest that she witnessed, that
13 she was there to provide security for --

14 THE COURT: And she said she doesn't
15 remember.

16 MR. FAYHEE: -- and she can't seem to
17 recall anything regarding it. So I'm asking
18 additional questions to try to jog her memory. And
19 now she's claiming that she can't answer whether there
20 was a confidential human source in the room, even
21 though she asked about him during the course of the
22 interview, because she says she's not at liberty to
23 testify whether one or wasn't.

24 THE COURT: She knows --

25 MR. MURRAY: This is a hearing --

1 THE COURT: Yes?

2 MR. MURRAY: -- Your Honor, this is a
3 hearing about the consent of -- at this interview.
4 The Agent has listened to the recording, has reviewed
5 the transcript, she's testified about those facts.
6 We've been -- not objected to Mr. Fayhee going into
7 this irrelevant area, but she does not recall at this
8 point these issues, you know, and now it's becoming
9 argumentative.

10 THE COURT: Well, it's all right for
11 him to -- I'll allow it, but make it short.

12 MR. FAYHEE: Thank you.

13 BY MR. FAYHEE:

14 Q The question was whether or not there was a
15 confidential human source in the room at the time of
16 the arrest?

17 THE COURT: If you know.

18 THE WITNESS: I believe there was.
19 But, again, I was not the lead agent on the case, and
20 my task that day was to go in and help safely execute
21 the arrest of every individual in the room and then to
22 transport Mr. Hovan, which is what I did and I
23 remember doing that very well.

24 BY MR. FAYHEE:

25 Q Was the confidential human source arrested

1 then? If everyone in the room was being arrested, was
2 the confidential human source arrested at that time?

3 A I believe everyone in the room was put into
4 handcuffs and in the room.

5 Q Okay. Now, at the time that you came in to
6 effectuate the arrest --

7 A Uh-huh.

8 Q -- I know pursuant to FBI policy and,
9 obviously, it makes sense you were armed, correct?

10 A Yes.

11 Q And every FBI agent there to effectuate the
12 arrest was armed?

13 A That's correct.

14 Q Do you remember whether you, you personally,
15 had your firearm drawn when coming in the room?

16 A No, I did not have it out.

17 Q Okay. Do you remember if any other FBI
18 agent had their firearm drawn when they came in the
19 room?

20 A I can't speak to everyone else. I believe
21 the plan was not to. So, you know, once we're in the
22 room, my focus is elsewhere, it's on making sure that
23 we secure every individual that's in the room safely.
24 So I can tell you that I did not have my weapon out.

25 Q Okay, you can tell me that you didn't have

1 your weapon out and you said, as I hear it, your
2 understanding of the plan is that firearms would not
3 be drawn, correct?

4 A That's -- I believe that was what the plan
5 was.

6 Q Got it.

7 A It may have been to have your hand on it in
8 case you need it, but, yes, in this circumstance and
9 going into an environment like this, the plan was to
10 go in and safely kind of secure everyone away from
11 each other.

12 Q Okay, fair enough. And had you -- because
13 you were assigned at least to transport Mr. Hovan and
14 to interview him, had you researched Mr. Hovan's past,
15 meaning his arrest history, background, education,
16 those sorts of things?

17 A We were given some general information about
18 him.

19 Q Okay. And what was that general
20 information?

21 A Information on criminal history, information
22 on what the investigation had shown was his
23 involvement at that point.

24 Q Okay. And do you have -- can you recall
25 sitting here today what his criminal history was?

1 A I believe he didn't have any.

2 Q That he had never been arrested?

3 A I don't think so.

4 Q Okay. And you referenced, you can flip back
5 to it, if you'd like, I think it's already in
6 evidence, the LinkedIn page that was put up on the
7 screen here. My recollection, it might be Exhibit
8 Number -- I'm losing numbers here --

9 THE COURT: Well --

10 THE WITNESS: 4?

11 THE COURT: -- we don't have any
12 objection to that.

13 MR. MURRAY: It's Exhibit Number --

14 THE COURT: Come on, move on.

15 MR. MURRAY: -- it's Exhibit Number 4.

16 MR. FAYHEE: Exhibit Number 4.

17 BY MR. FAYHEE:

18 Q That document that was referenced, the
19 LinkedIn page at tab 4 -- excuse me, I shouldn't rely
20 on my memory -- was this a document that you had
21 reviewed prior to the arrest?

22 A No, it was a document I've reviewed more
23 recently.

24 Q Okay. In preparation for your testimony
25 today?

1 A That's correct.

2 Q Okay. And the facts that you reviewed in
3 preparation for your testimony today here, were those
4 generally known to you at that time? For example,
5 that he was a college graduate and that he worked at
6 AT&T?

7 A His employment was known to me. I don't
8 think I specifically asked if he was a college
9 graduate, but it was very apparent in the interview
10 that he was well educated.

11 Q Sure. No, that's right. And -- okay.

12 So Mr. Hovan is placed under arrest, we're moving
13 from the hotel, we're putting him in a car, as I
14 understand correctly, just to move things along, and
15 we're taking him over to the FBI for the purposes of
16 the interview, correct?

17 A Yes.

18 Q Now, at the time that Mr. Hovan is placed
19 under arrest, I understand handcuffs were placed on
20 him, is that correct?

21 A Yes, that's right.

22 Q Standard protocol?

23 A Yes.

24 Q He's then transported over to the FBI
25 building a couple of blocks away, correct?

1 A Yes.

2 Q And then brought into the FBI building, up
3 an elevator, and up into the interview room, correct?

4 A Yes.

5 Q From there, I understand there's an
6 interview room, two Special Agents and one analyst are
7 present, yourself --

8 A Forensic accountant.

9 Q Forensics accountant -- excuse me, forensic
10 accountant, Ms. Weber?

11 A Uh-huh.

12 Q Yourself and Special Agent Jackson, correct?

13 A Yes, that's right.

14 Q Now, I was hoping you might be able to just
15 give me a better understanding of the room. You did a
16 good job on direct. I didn't know it was pink inside,
17 but I understand there's some pink veneer in the room
18 or something?

19 A No, it was just a neutral color --

20 Q A neutral color.

21 A -- I believe is what I said.

22 Q Okay, okay.

23 A It's not pink.

24 Q Okay, good, that's good to hear. A neutral
25 color, all right. And then is the table square?

1 A The table is round.

2 Q It's round, okay. And where are you sitting
3 in comparison to Mr. Hovan?

4 A I'm sitting to Mr. Hovan's left.

5 Q Okay.

6 THE COURT: On his lap?

7 THE WITNESS: To his left.

8 THE COURT: Oh, okay.

9 THE WITNESS: I'm sorry.

10 THE COURT: Okay.

11 MR. FAYHEE: I'm glad you heard that
12 incorrectly, Your Honor.

13 THE COURT: I just want to make sure I
14 heard her correctly.

15 (Laughter)

16 MR. MURRAY: Thank you for clarifying.

17 BY MR. FAYHEE:

18 Q You're sitting to Mr. Hovan's left --

19 A Yes.

20 Q -- and where is Special Agent Jackson
21 sitting?

22 A He's sitting to Mr. Hovan's right.

23 Q Okay. And I suppose -- I don't know how
24 many chairs fit around this table. Are there chairs
25 around the table?

1 A Yes.

2 Q How many?

3 A Four.

4 Q Okay, so four chairs. You're sitting to his
5 -- Mr. Hovan's left, Special Agent Jackson is sitting
6 to his right, and is anyone sitting in the fourth
7 chair?

8 A Yes, Forensic Accountant Megan Weber.

9 Q All right, so all the chairs are full. And
10 she's sitting then, I take it, across from him?

11 A Yes, she's sitting to my left, to Agent
12 Jackson's right.

13 Q Okay. And is Mr. Hovan, once in the room,
14 is he restrained?

15 A Yes, he had leg shackles on, but his hands
16 were free, he was un-handcuffed.

17 Q Okay. So do you recall when you took his
18 handcuffs off, was it -- it would have been in the
19 room or --

20 A It was prior to the interview, once he was
21 in the room --

22 Q Okay.

23 A -- and it was very quick to get him up,
24 between the time that we got him up into the room and
25 started the interview. So I imagine it was very

1 quickly.

2 Q Okay. And is the door open or locked?

3 A So, typically, when we make an arrest, we
4 take someone to the main federal building in our
5 office over there where we have a true booking room
6 and that is a much more secure location. This
7 location is just an interview room. So Mr. Hovan, had
8 he not been restrained, if he had gotten past us, he
9 could have gone out that interview door, turned right,
10 gone down the elevators, and gone free. There was no
11 security, there's no front desk, there's nothing to
12 ensure that he doesn't leave.

13 Q And that's why you had leg irons on?

14 A Yes, that's right.

15 Q And are leg irons required in every instance
16 for persons taken in those rooms for the purposes of
17 doing an interview?

18 A So we just take all factors into account and
19 always make sure that safety first, and whatever makes
20 sense. For other people, handcuffs may have stayed
21 on. In the actual booking rooms, there's an oval
22 where you can connect a handcuff. So in those cases
23 we might leave one handcuff on and take the leg
24 shackles off. We just do something to try and ensure
25 he's as comfortable as he can be while still

1 maintaining our safety and restricting his movement.

2 Q And so you mentioned there's an oval, that's
3 like a device to connect one hand with a handcuff to
4 that device so the hand can't move freely --

5 A But that's not in this room.

6 Q There wasn't one in this room, but -- okay,
7 gotcha, understood. And it wasn't made use of in this
8 interview?

9 A Correct.

10 Q In other words, with Mr. Hovan, his hands
11 were free?

12 A There was not one in this room.

13 Q Got it.

14 A This room was just a normal round table.

15 Q And I was just curious, you know, having now
16 seen the LinkedIn page, as you see it, and the
17 research you did and the fact that he had no criminal
18 history, no arrests or otherwise, I was wondering what
19 set of circumstances were relied upon to place him in
20 leg irons?

21 A Just, again, we were ensuring agent safety
22 and that we needed to ensure that we could restrict
23 his movements. Obviously, Mr. Hovan is a larger guy,
24 he is larger than me. You know, we always need to
25 take various factors into account and the biggest one

1 is that we were in an interview room that was
2 unsecured, that he could leave the room and get out
3 and get down the elevators. So we made sure that the
4 leg shackles were comfortable and weren't bothering
5 him.

6 Q So it was a concern -- I just wanted to get
7 this straight, is there a flight risk concern, a
8 safety concern, both?

9 A Both, just --

10 Q Okay.

11 A -- yes.

12 Q Okay. And he could run out the FBI and have
13 time to get in an elevator, push the button, wait for
14 the elevators to open, get in and then go downstairs,
15 and that's why leg irons were required? I'm having
16 trouble following here.

17 A I mean, again, we always have to ensure the
18 safety of everyone. Mr. Hovan is under arrest, he is
19 not free to leave at that point, we do need to make
20 sure that he's restricted in a way that he's still
21 comfortable, but he is under arrest at that point.
22 So, to ensure agent safety, to ensure that he does not
23 flee, yes, the decision was made to leave his hands
24 free and make him more comfortable in that way, but
25 leave the leg shackles on to restrict his movement and

1 ensure safety.

2 Q Okay. And who made that decision to wear
3 the leg irons?

4 A Agent Jackson and I sort of made it
5 together.

6 Q Okay. Was that prior to his arrest or after
7 his arrest?

8 A It was sort of as we got in the room, saw
9 the circumstances, saw his demeanor. You know, if he
10 had not been so calm and cooperative, if he had been
11 more elevated, upset, irate, then we would have had to
12 take that into account as well, but his demeanor
13 played a large role in the fact that we did un-
14 handcuff him.

15 Q And so his calm demeanor led to the choice
16 to put leg irons on him during the course of the
17 interview?

18 A No, he had the leg irons on during
19 transport.

20 Q Okay.

21 A The choice to un-handcuff him was because of
22 his calm, cooperative demeanor.

23 Q Got it. Okay, very well.

24 THE COURT: How much longer are you
25 going to be?

1 MR. FAYHEE: Just I'm going to go to
2 the transcript and talk through a couple of points. I
3 anticipate --

4 THE COURT: Because we -- I mean, we've
5 been going on about two and a half hours. Nobody -- I
6 took some lunch, but I don't know about anybody else.
7 Are you starved? Okay, why don't we take 15 minutes,
8 you have to have -- because I would like to be able to
9 finish up today, I don't want to have to go further.

10 MR. MURRAY: Yes, Your Honor. And I'm
11 just wondering, I'm trying to look at our team and to
12 see whether or not -- if the Court would like to take
13 a break, we'd be fine. I'm not sure 15 minutes will
14 give anybody an opportunity to eat --

15 THE COURT: Twenty minutes?

16 MR. MURRAY: Or we could go straight
17 through, if --

18 THE COURT: Well, that's up to you.

19 MR. FAYHEE: And I'm absolutely happy
20 to go straight through, I don't want to speak -- but
21 my guess is that they're okay too.

22 THE COURT: All right, go on.

23 MR. FAYHEE: Okay.

24 MR. MURRAY: We appreciate the
25 indulgence, but thank you, Your Honor.

1 MR. FAYHEE: And, again, I'll keep my
2 promise to be swift here as best I can.

3 BY MR. FAYHEE:

4 Q All right, so moving on to the course of the
5 interview. So you're going to have that set of
6 documents before you there and if you wouldn't mind
7 flipping to Exhibit 1, you'll see there and you might
8 recognize a transcript of the audio recording of Mr.
9 Hovan's interview. Do you see that?

10 A Yes, I do.

11 Q Okay. Now, in particular, Special Agent
12 Fear, I want to draw your attention for the Judge's
13 benefit here, I'm looking at -- and for everybody's
14 benefit -- I'm looking at page 2, all right?

15 THE COURT: This is 1-B?

16 BY MR. FAYHEE:

17 Q This is 1-B, page 2 of the transcript, and
18 in particular I'm referencing line 29. Do you see
19 that?

20 A Yes.

21 Q Now, at this point, the initial next to it,
22 you recognize that as Special Agent Jackson's
23 initials, correct?

24 A Yes, that's right.

25 Q And he says, as recorded in the transcript,

1 "This down 12:20" -- I take it he's referring to the
2 time --

3 A Uh-huh.

4 Q -- that he's sitting here, and it says, "All
5 right, all right. Let me scoot here and read these to
6 you, okay? So this is your advice-of-rights form.
7 Okay." Do you remember that?

8 A Yes, I do

9 Q Okay. And what's he describing there, what
10 did you witness at that time?

11 A At that point, Agent Jackson has the FD-395
12 advice-of-rights form out and he is scooting a little
13 bit closer to Mr. Hovan, so that he can see it and
14 they can go through the form together to ensure that
15 Mr. Hovan understood his rights.

16 Q And he didn't have to scoot very far because
17 he was sitting just beside him, right?

18 A It's a small table, so --

19 Q It's a small table.

20 A -- he didn't have to scoot very far.

21 Q Okay, okay. And so he scoots next to him
22 and that way they can read the form together?

23 A Yes, that's right.

24 Q Because on this particular form, it's FBI
25 policy, it's required to read each and every one of

1 the Miranda rights from the form, correct?

2 A All that's required is to go over the form
3 and ensure that the person that you have under arrest
4 or that you're reading the rights to understands the
5 form. Whether you choose to read it or not, that's
6 not a requirement.

7 Q So it's not a requirement for the agent to
8 orally recite the Miranda warnings that are depicted
9 here in the transcript?

10 A No, I believe Agent Jackson just did that to
11 ensure that Mr. Hovan was following along and
12 understood his rights.

13 Q Okay, okay. And if you flip to what's tab
14 2, I believe -- yep, exactly -- tab 2 in that same
15 binder, you're going to find in fact that the FD-395
16 you reference is there before you, correct?

17 A Yes.

18 Q And in this instance, consistent with what
19 we see in the transcript, we see this advice of
20 rights, that's correct, depicted here in the form,
21 correct?

22 A This is the advice of rights, yes.

23 Q Yep. And it's the same advice of rights
24 that was read to him, to Mr. Hovan, and captured in
25 this transcript?

1 A Yes.

2 Q And in each instance Mr. Hovan has initialed
3 each of these rights that are being orally presented
4 to him?

5 A Yes.

6 Q And the purpose of that is to demonstrate
7 that in fact they were provided to Mr. Hovan, correct?

8 A Well, I believe, if you listen to the
9 recording or look at the transcript, Agent Jackson
10 read these to him and then asked him to initial next
11 to each one to ensure he understood it.

12 Q Correct and that makes sense. And then it's
13 signed, of course, in this instance by Agent Jackson
14 and then also by Mr. Hovan?

15 A And by myself as well.

16 Q And by yourself as a witness. You're on the
17 second witness line, if I understand it correctly --

18 A Yes.

19 Q -- yes? Okay, very well.

20 And this happens, as is set out in the
21 transcript, before any questions at all, correct?

22 A Yes, any substantive questions about the
23 case, absolutely.

24 Q And that's because it's important for the
25 witness who's being interviewed to fully and

1 completely understand their rights?

2 A Yes.

3 Q And to voluntarily -- knowingly and
4 voluntarily waive them if they wish to speak, correct?

5 A Yes. They need to understand their rights
6 and they can choose whether to speak with us now or to
7 wait and have a lawyer present.

8 Q Exactly, exactly. And that way they
9 understand their rights and then, if they choose to
10 waive them, you can start asking questions of them?

11 A Yes, that's right.

12 Q Got it, understood. All right. So I want
13 to fast forward a little bit in the course of the
14 interview and I want to get all the way to page 21
15 that's depicted there in the transcript. Now, we have
16 the audio recording here, if it would be helpful, but
17 I'm just focused on time, I'd like to just use the
18 transcript, if I could.

19 Now, you testified earlier that Mr. Hovan
20 provided his verbal consent, that is verbal consent to
21 the search of his electronic devices -- we're speaking
22 of two phones, right, an iPhone and a Samsung phone --
23 you testified that he offered his verbal consent prior
24 to getting his written consent, correct?

25 A Correct.

1 Q Okay. Now, I'm interested in particular,
2 Special Agent Fear -- and I know if we need to go back
3 or you need some time and context, I don't want to --
4 no surprises here -- I'm looking at line 23. I think
5 you testified about this on direct examination. You
6 say, "Is there anything else we haven't asked you
7 about that would be helpful for us to know about the
8 deal or these people," correct?

9 A Uh-huh.

10 Q Okay. Mr. Hovan provides a response and
11 then comes down a little bit further. Now we're all
12 the way to the bottom of page 21, okay? There's --

13 A Yes.

14 Q -- there's a paragraph that starts at line
15 40 where Mr. Hovan starts out. He says, "I'm not
16 going to lie and try," did you hear that?

17 A Yes.

18 Q Okay. So same paragraph, down to the very
19 bottom of the page, Mr. Hovan makes a reference, it
20 says, "Like having a look at WhatsApp conversations
21 and things like that" --

22 MR. MURRAY: Objection again. I'm
23 sorry to do this, but I think it is relevant, the
24 transcript says, "Like have at looking at WhatsApp
25 messages" --

1 MR. FAYHEE: No problem, Your Honor,
2 I'll read the whole thing. I was just trying to move
3 things along. I'll start over.

4 BY MR. FAYHEE:

5 Q "And, like I said, like have at looking at
6 WhatsApp conversations and things like that, they're
7 fair game to you." Okay? And then he says, I mean,
8 you're going to look at them anyway probably, but I'll
9 point you to the ones, I'll point you to every single
10 conversation I've ever had." Do you see that?

11 A I do. There's a couple points where you
12 didn't read it verbatim, but yes.

13 Q I tried my best. It's been a long day.

14 A Sure.

15 Q My question is, before that -- before that
16 recorded conversation, we'll rely on the recording, to
17 your mind, had Mr. Hovan consented, verbally consented
18 to the search of his phones before, after, or does
19 this reflect his consent?

20 A As you can see even in his words, he said,
21 "And, like I said, like have at looking at WhatsApp
22 conversations." So, multiple times earlier in the
23 interview, he had already referenced that we could
24 read through the WhatsApp conversations. And so he's
25 referring back to that, sort of I already said you

1 could have at looking through WhatsApp conversations
2 and things like that. I know WhatsApp is a free
3 messenger that you download to your phone that allows
4 you to send and receive things like text messages.

5 So at that point he is offering verbal
6 consent for us to look at the WhatsApp conversations
7 "and things like that," meaning other communications
8 similar.

9 Q I see. And so I'm just looking for a time
10 frame here. So do you believe, sitting here today,
11 that Mr. Hovan had verbally consented before this
12 paragraph depicted at the bottom of the page after,
13 during, or all three?

14 A So I think it's one of the situations where
15 he had from the start been very eager to cooperate and
16 had offered repeatedly to help us in any way that he
17 could. There were other earlier references to you can
18 look through my WhatsApp, which was a form of consent.
19 I would have followed up on that more clearly, but it
20 was verbal consent. He was offering for us to look
21 through his WhatsApp conversations. At this point,
22 unprompted, I had just asked an open-ended, rather
23 generic question that he then led to "have at looking
24 at WhatsApp conversations and things like that." To
25 me, at that point he is then saying, yes, you can look

1 at WhatsApp conversations and things like that.

2 Q And so -- now, you think he has consent at
3 least in the course of this, if I understand your
4 testimony correctly, because he says, "I mean, you're
5 going to look at them anyway probably, but I'll point
6 you to the ones, I'll point you to every single
7 conversation I ever had." You don't respond, but Mr.
8 -- excuse me, Special Agent Jackson does, "Right."

9 So notwithstanding the statement, "I mean,
10 you're going to look at them anyway probably, but I'll
11 point you to the ones," by that point you have verbal
12 consent to search the phone?

13 A With the continuation of that sentence, but,
14 you know, in doing our due diligence, we of course
15 followed up with written consent.

16 Q Yep, we're going to get to that, but I'm
17 really interested because it's -- I heard it quite a
18 few times that you had verbal consent, so I was just
19 confused by the statement Mr. Hovan made, "I mean,
20 you're going to look at them anyway probably," if you
21 had verbal consent.

22 A So, if you look at that entire statement,
23 Mr. Hovan is giving us verbal consent to look through
24 the WhatsApp communication -- conversations and things
25 like that on his phone. He is clearly saying "have

1 at," meaning go ahead and look at these
2 communications. And then not only that, but he goes
3 to the next level and says I'll point you to every
4 single conversation that I've ever had. So, yes, he's
5 consenting verbally.

6 Q So -- just to make sure I have it crystal
7 clear -- so Mr. Hovan, in offering to voluntarily in
8 the course of the interview walk you through WhatsApp
9 conversations -- and then I see the focus on this word
10 -- "And, like I said, like looking at" -- "and things
11 like that" -- that you had verbal consent not just to
12 look at the WhatsApp messages in the course of the
13 interview, but to search the phones?

14 A I mean, in general, this entire interview I
15 feel like needs to be looked at in totality, because
16 he then later does go on to verbally say feel free to
17 look through everything. So it's all kind of taken
18 together, but at that point I know that we have verbal
19 consent to look through his phones at these specific
20 types of communications.

21 Q Sure, okay. So page 21, we're here. Take
22 as much time as you need with these pages because I'm
23 interested in knowing at this time, if you can recall,
24 that is, this paragraph we're focused on at the bottom
25 of page 29 --

1 A 29?

2 Q Excuse me, I'm sorry, 21.

3 A Okay.

4 Q Whether at that time Mr. Hovan had reviewed
5 the consent form that's located at your tab there at
6 tab 3.

7 A No. So we were following logically the
8 course of the interview. So, again, this unprompted,
9 unsolicited offering by Mr. Hovan to look at his
10 WhatsApp chats came from my generic, open-ended
11 question. So at that point we then follow up and
12 follow through the process to start confirming his
13 consent, which involved asking whether or not his
14 phones had passcodes, and then pulling out a consent-
15 to-search form and getting written consent, if he
16 chose to agree to it.

17 Q Sure. And you've just provided a very
18 decent summary. If we look at page 22 here, if we're
19 at line 14, you say, "Yeah, uh, do your phones, do
20 they have passcodes?"

21 A Uh-huh.

22 Q Now, at that point, is the consent-of-search
23 form in front of Mr. Hovan or --

24 A No, it's not --

25 Q -- has he not --

1 A -- yet.

2 Q -- been provided -- okay, okay.

3 A It's not yet.

4 Q So, unlike in the Miranda context where you
5 hold back, where you give them their advice first,
6 here you ask the questions first and then give him the
7 form later?

8 MR. MURRAY: Objection --

9 THE WITNESS: No, I'm sorry --

10 MR. MURRAY: -- it's a
11 mischaracterization. That's -- at that point, ask
12 what questions? The question was an open-ended
13 question and Mr. Hovan ended up volunteering it.

14 THE COURT: You can argue that in your
15 final submission to me. You can answer the question.
16 Overruled.

17 THE WITNESS: Can you --

18 BY MR. FAYHEE:

19 Q Sure. The question is -- the question is,
20 in contrast to the Miranda warnings where you give the
21 warnings, you read them, they initial them, then you
22 ask questions, here the questions come first,
23 specifically do your phones, do they have passcodes,
24 and then you give him the form, isn't that correct?

25 A No, that's not correct. That's --

1 Q Okay.

2 A -- not how I would put it at all. So what's
3 happening here is, again, we're following the course
4 of the logical interview. So he has verbally offered
5 for us to look through the WhatsApp chats and things
6 like that and at this point, you know, we're talking
7 about phones. And I didn't ask him for his passcodes
8 to get into it right there, I was just curious if his
9 phones had passcodes, sort of a -- just a continuation
10 of the conversation. And then following that point,
11 before we got into the phones and were looking through
12 them, Agent Jackson does go through the consent-to-
13 search form, fill it out, and Mr. Hovan signs it,
14 confirming his verbal consent through the written
15 consent.

16 Q Got it, okay. So -- but it's true, isn't
17 it, that you were asking for the passcodes for the
18 purposes of allowing the FBI to search the phones?

19 A At that point I wasn't asking for the
20 passcodes, I just asked if the phones had passcodes.

21 Q So when you say "do they have passcodes,"
22 you were only interested in him saying yes and not
23 what the passcodes were?

24 A Well, we were talking generally about
25 passcodes, I was just pointing out that at that point

1 I hadn't specifically asked him for them.

2 Q I see. And so in line 19 when you say, "Oh,
3 yeah, I mean, we're going to look at the phones
4 regardless and it's usually just easier," are you
5 still at that point, you know, moments later
6 interested only whether they have passcodes?

7 A No, at that point we are starting to talk
8 about what the passcodes would be and starting to
9 understand, because he's indicated that his work phone
10 does have a passcode, so --

11 Q And this is before, once again, there's an
12 advice of rights on the consent form in front of Mr.
13 Hovan?

14 A It's not an advice of rights, it's a consent
15 to search, and we had not searched through the phones
16 or looked through the phones, we were just having a
17 general discussion about it.

18 Q Sure. Why don't I -- maybe it would be
19 easier just to make sure we're on the same page here,
20 why don't you take a look at the specific form that
21 Mr. Hovan was provided, which is at 3. And in
22 particular, as you just said, it's not an advice of
23 rights form and, it's true, it's called a consent to
24 search, but I see this part, number 2, "I have been
25 advised of my right to refuse consent," do you see

1 that?

2 A I do.

3 Q Okay. So when you're making the statement
4 that you're, quote, "going to look at the phones
5 regardless," is that the point at which he's advised
6 of his right to refuse consent?

7 A No, not at all. So when I say we're going
8 to look at both phones regardless, it's in the context
9 of just the general passcode conversation. He's
10 indicated that his work phone does have a passcode,
11 but then follows up to say but there's nothing on it,
12 but you can still look at it. So I'm trying to say,
13 yes, we would still want to look at that phone
14 regardless, meaning to check it out and just make sure
15 that there's nothing on it. So that happens before
16 the -- we're still just explaining this to him, that
17 happens before the consent-to-search form is pulled
18 out.

19 Q I see, I see. Okay. Going down here to
20 line 29, Special Agent Jackson --

21 THE COURT: What page?

22 BY MR. FAYHEE:

23 Q -- here we see a first reference to a
24 consent form. He says, "Okay, so what we're" --

25 THE COURT: What page are you on?

1 MR. FAYHEE: Excuse me, Your Honor,
2 still 22, same page, line 29.

3 THE COURT: All right.

4 BY MR. FAYHEE:

5 Q Once again, Special Agent Jackson states,
6 "Okay, so what we're going to do is I'm going to have
7 you, if you're good with this, with us looking through
8 your phones, I'm going to have you sign a consent
9 form." Do you see that?

10 A Yes.

11 Q Okay. Now, at this point, who is the form
12 in front of, Special Agent Jackson or Mr. Hovan?

13 A Special Agent Jackson has it out.

14 Q Right. So it's still not in front of Mr.
15 Hovan, we're on the same page?

16 A Agent Jackson is right next to Mr. Hovan.

17 Q Because they're sitting right next to each
18 other, not across the table, but right next to one
19 another?

20 A It's a small, round table, I mean, it's --

21 Q Your sense, as best as you know, Mr. Hovan
22 can read it from where he's sitting?

23 A Well, I know he can read it because, as
24 Agent Jackson started to fill it out, Mr. Hovan
25 corrected him because he saw that he was writing in

1 all capital letters for the "hova," and he said
2 lowercase and corrected Agent Jackson. So I know he
3 could read it.

4 Q Okay, okay. And so in the course of filling
5 it out, as you've testified, Special Agent Jackson is
6 filling out the passcode, there's this back and forth
7 in the course of 23, but on this full page, to the
8 best of your knowledge as you review it today, the
9 form is still in front of Special Agent Jackson?

10 A Agent Jackson is filling out the form. But,
11 again, this is where I know Mr. Hovan is tracking and
12 following what Agent Jackson is doing because, as you
13 can see in lines 5 through I guess 11, Mr. Hovan says,
14 "Yeah, it's 0510 H-O-H," Agent Jackson says, "Hold on,
15 I'm sorry. There's 1510."

16 Mr. Hovan says, "That's my birthday and then
17 H-O-V-A." And then there's a pause and he says,
18 "Lowercase." And if you were to look at the form,
19 that's the point at which Agent Jackson is writing
20 down, so he's writing 0510HOVA, in all capitals, and
21 Mr. Hovan is watching him and is clarifying it's
22 lowercase.

23 Q Okay. It's not a verbal clarification, it's
24 because they're sitting so close to one another he can
25 see the form itself and following along as he's

1 writing it?

2 A Correct.

3 Q I see.

4 A You can hear that Agent Jackson isn't saying
5 is it uppercase or lowercase, Mr. Hovan sees it and
6 corrects him.

7 Q Okay. Okay, understood. Now, if we go on
8 to page 24 -- again, I tried to move through, but --
9 without reciting it, but take as much time as you need
10 to get through it -- there's continued discussion
11 about passwords and the like. Do you see that there?

12 A Yes, I do.

13 Q Okay. But still in the course of this
14 conversation, as it continues on to page 25 and then
15 even on to page 26, only there, page 26 at -- to be
16 very specific, we're at line 12 -- well, really, line
17 -- just to be fair, line 6, we're sort of capturing
18 between lines 6 and 16. Do you see that there? Why
19 don't you take a minute?

20 (Pause)

21 A Okay.

22 Q Now, at that point, very clearly the form is
23 now in front of Mr. Hovan, correct?

24 A Correct.

25 Q Because he's applying his actual signature

1 to the form?

2 A Yes.

3 Q Yep. And dating it as well, he's asking for
4 clarification about the date?

5 A Yes.

6 Q Okay. And so Agent Jackson just slides the
7 form in front of him and for Mr. Hovan to finish
8 signing it?

9 A So these pages that you just skipped over is
10 where Agent Jackson, this discussion of passwords is
11 so that he can write it down on here --

12 Q Yep.

13 A -- and then Mr. Hovan is so eager to help,
14 he's trying to take off the passcodes on his phone.

15 Q Uh-huh.

16 A And then Agent Jackson does show him the
17 form and Mr. Hovan signs the form.

18 Q Correct, correct. We're on the same page.
19 And so I don't see here on page 26 prior to the
20 signature that Special Agent Jackson read the form to
21 him.

22 A That's correct, he didn't read this one to
23 him.

24 Q He didn't read this one to him, nor did --
25 if you look back to Exhibit Number 3 -- nor did Mr.

1 Hovan initial the 2, 3, and 4 under the descriptions
2 of the phone?

3 A That's right.

4 Q Even though it says, "I have been advised of
5 my right to refuse consent"?

6 A That's right.

7 Q He wasn't verbally advised of his right to
8 refuse consent?

9 A He was advised of that right on this form,
10 which he was reading and following along as Agent
11 Jackson was filling out.

12 Q Well, he's confirming that he's been advised
13 of the -- if he's given the opportunity to read it,
14 that is -- confirming that he's been advised of his
15 right to refuse consent, but it wasn't read to him,
16 correct?

17 MR. MURRAY: Objection, argumentative.

18 MR. FAYHEE: Your Honor, I'll withdraw
19 it. I think I made the point.

20 THE COURT: Okay.

21 BY MR. FAYHEE:

22 Q Let me -- final series of questions. On
23 direct examination, you discussed much later in the
24 transcript, after the written consent was signed,
25 there were references to a number of chats that Mr.

1 Hovan was showing you names and sharing phone numbers,
2 do you recall that?

3 A Yes, I do.

4 Q All right. Now, there's a reference, I
5 believe that Mr. Murray in particular referenced the
6 bottom of page 26, 41, line 41, that begins with,
7 "Ravi, Nicky Fuchs, Swiss Specialists," et cetera. Do
8 you see that?

9 A Uh-huh.

10 Q All right. Now, do you recognize these
11 names that are offered here; Ravi, Nicky Fuchs, Swiss
12 Specialists?

13 A From reviewing the transcript, it's
14 refreshed my memory that Ravi and Nicky Fuchs were
15 people that were allegedly involved in the conspiracy.

16 Q Okay. So you don't know that Ravi is in
17 fact the name, not the actual name, but the name of an
18 FBI undercover agent?

19 A I don't know anything about the undercover
20 operatives.

21 Q And you don't know that Ravi as the FBI
22 undercover agent actually set up these WhatsApp groups
23 on Mr. Hovan's phone?

24 A Again, as I said, I don't know anything
25 about the undercover operatives or any aspects of the

1 investigation to that extent.

2 Q Okay. But you were interested in asking
3 questions about these WhatsApp -- these WhatsApp
4 conversations?

5 A Oh, no, he had just mentioned multiple times
6 that he would point out all the relevant conversations
7 and the relevant people for us. So at this point
8 we're just going through his phone together and he's
9 doing exactly what he had offered to do throughout,
10 which was pointing out this is this person, this group
11 is one that was related to this, that's all he's doing
12 at that point.

13 Q And so he's doing at that point when you see
14 the reference to the, quote, "Swish -- Swiss
15 Specialist" at line 43? You don't know, sitting here
16 today, that the Swiss Specialist was introduced to Mr.
17 Hovan by the FBI undercover?

18 A I don't know anything about Swiss Specialist
19 other than what's captured on this recording.

20 Q Got it. Okay.

21 MR. FAYHEE: One moment, Your Honor.

22 (Pause)

23 MR. FAYHEE: All right, Your Honor, I
24 have no further questions.

25 THE COURT: So is there any -- any --

1 MR. MURRAY: No, Your Honor. Thank
2 you.

3 THE COURT: Okay, all right. Healthy
4 appetite.

5 (Witness excused)

6 THE COURT: I'm going to ask -- how
7 much time do you need to file a follow-up what you
8 think you've proven?

9 MR. MURRAY: I think if we get to have
10 two weeks, Your Honor.

11 THE COURT: Okay, that's fine --

12 MR. MURRAY: And actually --

13 THE COURT: -- because the trial is not
14 going to happen when we think it's going to happen.

15 MR. MURRAY: And I'm checking. I think
16 we need two weeks, Your Honor, but if the -- assuming
17 the trial is not happening, there's a family vacation
18 that I was hoping to take next week. So if --

19 THE COURT: Oh, no, no, no, no --

20 MR. MURRAY: -- we could make it three
21 weeks.

22 THE COURT: -- wait a second. Lawyers
23 work too hard, you are going to -- look, I'm taking
24 judicial notice of that --

25 (Laughter)

1 THE COURT: -- you have a vacation,
2 that has to take precedence at this particular moment,
3 if it doesn't interfere with the rights of the
4 Defendant. So when do you -- three weeks?

5 MR. MURRAY: Three weeks.

6 THE COURT: Is that all right with you?

7 MR. FAYHEE: It is, Your Honor -- it
8 probably is. Can I just raise one quick question,
9 what's pending here on the trial date? Obviously, I
10 absolutely understand there's not going to be a trial
11 on July 12th, which is when it's currently scheduled,
12 no problem at all. There is, though, you might know,
13 a current pending motion to move the trial date from
14 July 6th to six months total.

15 THE COURT: Well, I will certainly
16 consider that, but that seems pretty far off. I can't
17 tell -- but I will consider it. I think that --
18 what's your position on that?

19 MR. MURRAY: The other defendants, I
20 know -- I don't believe that Mr. Hovan has agreed to
21 that motion yet and I'm not sure he's taken a position
22 on it -- perhaps I'm, you know, wrong about that, but
23 obviously Mr. Fayhee will do it -- the Government
24 doesn't object to the Defendant's request for that
25 time.

1 MR. FAYHEE: And, Your Honor, the only
2 point is this. There was one party that did not
3 consent to it and it was us. We do think six months
4 is too long and in particular, as stated in the motion
5 -- again, the other defense counsel have to reflect
6 exactly -- it's because they claim voluminous
7 discovery and the like. Obviously, the COVID issue
8 has pushed the trial date out. I'm sensible and
9 reasonable about that, I get it. Six months is way
10 too long. As you've heard today, Mr. Hovan had a job,
11 he wants to get one again, he wants to rebuild his
12 career, his reputation, the sooner we can have this
13 trial, as soon as possible, within reason, is what we
14 want --

15 THE COURT: Well, why don't we have --

16 MR. FAYHEE: -- and we don't believe
17 that's 60 days -- we believe it's 60 to 90 days.

18 THE COURT: Does 90 days work for you?

19 MR. MURRAY: We can be ready either
20 way, Your Honor.

21 THE COURT: All right.

22 MR. FAYHEE: And so the only reason I
23 offer that, Your Honor, is if we're -- I'm just
24 building back time. If we could get 90 days, that
25 would be great, and I just want to make sure we're

1 making the best use of that time.

2 THE COURT: This is from -- 90 days
3 from July?

4 MR. FAYHEE: That would be fine.

5 THE COURT: So it's August, September,
6 October. I don't know what my calendar looks like
7 now.

8 MR. FAYHEE: Fair enough.

9 THE COURT: Well, look, we'll call you.

10 MR. FAYHEE: Okay. I just wanted to
11 make that -- I just wanted to make that point and to
12 build that in.

13 THE COURT: All right. Well, we'll
14 call you if I have any question about it.

15 MR. MURRAY: And my only concern is,
16 Your Honor, I just know that I'm attached by some of
17 your colleagues for trials in the second half of
18 October and the beginning of November, so --

19 THE COURT: How long do you think this
20 trial is going to take?

21 MR. FAYHEE: Ask the Government first.

22 MR. MURRAY: Your Honor, I anticipate,
23 you know, there's a lot of transcripts in this case,
24 so I expect it will --

25 THE COURT: I've already seen that.

1 (Laughter)

2 MR. MURRAY: Exactly, Your Honor. I
3 thought today would go quicker and it didn't. So I'm
4 trying to readjust my estimates. I think it would
5 take at least a week and a half for the Government's
6 case.

7 THE COURT: All right, okay. And then
8 --

9 MR. FAYHEE: And, Your Honor, we
10 anticipate a significant number of defense witnesses,
11 fact witnesses in this case, and we're going to come
12 back to you probably with some motions on this
13 because, as you know and as we've talked about in the
14 past, there's some confidential human sources --

15 THE COURT: And you have trials --

16 MR. FAYHEE: -- that are essential --

17 THE COURT: -- and you have trials --
18 you do?

19 MR. MURRAY: I do.

20 THE COURT: In October?

21 MR. MURRAY: I have trials in October
22 and November.

23 THE COURT: Well, you know what's
24 happening, I mean, we're all of a sudden --

25 MR. MURRAY: Yes.

1 THE COURT: -- we're all of a sudden,
2 you know, have two and a half years -- a year and a
3 half's trials all at once. I'm going to have to call
4 you when I have my -- let's try and figure out when
5 we're going to get this thing decided.

6 MR. MURRAY: Yes.

7 THE COURT: And you can -- you want
8 three weeks, this is the -- so say it's -- July 1st,
9 7th, the 14th -- about the 21st of July.

10 MR. MURRAY: Okay. Very good, Your
11 Honor.

12 THE COURT: And you need two weeks to
13 respond?

14 MR. FAYHEE: If you'd like to set it up
15 that way. I'm sorry, I had understood them to be
16 joint submissions, but if you prefer that we do it in
17 that --

18 THE COURT: Well, he has to tell you
19 what he's going to do and you have to criticize it.

20 MR. FAYHEE: I prefer it that way
21 strongly.

22 (Laughter)

23 MR. FAYHEE: Yeah, that'd be fine, two
24 weeks would be fine.

25 THE COURT: Okay. All right, that's

1 fine. And we'll see what we can do, we'll see what we
2 can do and, if I have any questions, I'll just get you
3 on the phone.

4 MR. MURRAY: Great.

5 MR. FAYHEE: That would be just fine.

6 THE COURT: I think I did that once
7 before.

8 MR. MURRAY: Thank you, Your Honor.

9 THE COURT: Okay?

10 MR. FAYHEE: Thank you very much.

11 THE COURT: You're very welcome. Thank
12 you.

13 (Proceeding is adjourned)

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C E R T I F I C A T I O N

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We, Lisa Beck and Tracey Williams, certify
that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings
in the above-entitled matter.



Lisa Beck



Tracey Williams

Dated: July 7, 2021